CAMBRIDGE STUDIES IN INDIAN HISTORY AND SOCIETY

The Hindu Family and the Emergence of Modern India

Law, Citizenship and Community

Eleanor Newbigin



CAMBRIDGE

The Hindu Family and the Emergence of Modern India

Law, Citizenship and Community

Between 1955 and 1956 the Government of India passed four Hindu Law Acts to reform and codify Hindu family law. Scholars have understood these acts as a response to growing concern about women's rights but, in a powerful re-reading of their history, this book traces the origins of the Hindu law reform project to changes in the political economy of late colonial rule.

The Hindu Family and the Emergence of Modern India considers how questions regarding family structure, property rights and gender relations contributed to the development of representative politics, and how in solving these questions, India's secular and state power structures were consequently drawn into a complex and unique relationship with Hindu law.

In this comprehensive and illuminating resource for scholars and students, Eleanor Newbigin demonstrates the significance of gender and economy to the history of twentieth-century democratic government, as it emerged in India, and beyond.

ELEANOR NEWBIGIN is lecturer in Modern South Asian History at SOAS, University of London, where she teaches courses on colonial and postcolonial South Asian history.

Cambridge Studies in Indian History and Society 22

Cambridge Studies in Indian History and Society will publish monographs on the history and anthropology of modern India. In addition to its primary scholarly focus, the series will include work of an interdisciplinary nature which will contribute to contemporary social and cultural debates about Indian history and society. In this way, the series will further the general development of historical and anthropological knowledge and attract a wider readership than that concerned with India alone.

A list of titles which have been published in the series can be found at the end of the book.

CAMBRIDGE UNIVERSITY PRESS

The Hindu Family and the Emergence of Modern India

Law, Citizenship and Community

Eleanor Newbigin



CAMBRIDGE
UNIVERSITY PRESS

CAMBRIDGE
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

Published in the United States of America by Cambridge University Press, New York

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org
Information on this title: www.cambridge.org/9781107037830

First published 2013

Printed in the United Kingdom by CPI Group Ltd, Croydon CR0 4YY

A catalogue record for this publication is available from the British Library

Library of Congress Cataloging in Publication data
Newbigin, Eleanor, 1980–
The Hindu family and the emergence of modern India : law, citizenship and community / Eleanor Newbigin.
pages cm. – (Cambridge studies in Indian history and society)
Includes bibliographical references.
ISBN 978-1-107-03783-0 (Hardback)
1. Families–India–History–21st century. 2. Hindus–India–Social life and customs. 3. Hindus–Legal status, laws, etc. 4. Patriarchy–India. 5. Women–India. I. Title.
HQ1742.N4893 2013
306.850954–dc23 2013010577

ISBN 978-1-107-03783-0 Hardback

Contents

Acknowledgements

This book is the result of a research project that began more than a decade ago. I would like to thank the many impressive people who have worked with me and helped me during this time.

I owe most to my original supervisor, Raj Chandavarkar, who first encouraged me to pursue doctoral research and who continues to drive me now, even after his death in April 2006. I am lucky to have worked with him for the years that I did but I deeply regret not having been able to share with him this final manifestation of our many conversations. Knowing his perfectionism and critical sharpness, the production of this book would have undoubtedly been more painful had he been able to be more involved. I am certain, however, that the end result would have benefited from his input and hope that he would not disagree with or challenge too many ideas within this book.

I am also deeply grateful to William Gould, with whom I worked after Raj died. Will took over supervision of my project on the basis that the thesis was 'almost there', a supposition that quickly proved to be false. Much of this work took on its final form under his excellent guidance and support, as a supervisor, colleague and friend.

This book would not exist were it not for the generous funding I received from Trinity College, Cambridge, first in terms of the Internal Graduate Studentship and Pre-research Linguistic Studentship that I was awarded as a doctoral student, and then, from 2007 and 2010, as a Junior Research Fellow at the College. As well as this financial support, the College and its fellowship provided me with a rich academic environment from which I have drawn much intellectual stimulation. In particular I would like to thank Joya Chatterji and David Washbrook who nurtured and encouraged me throughout my time at Trinity and beyond. I am also very grateful to the staff of the History Department at New York University who hosted me as a visiting scholar between February and May 2010, a position that provided invaluable opportunities for me to develop key aspects of this manuscript. In September 2010 I took up the post of Lecturer in the History Department at SOAS, University of London,

where I have been able to develop another inspiring and invigorating intellectual home. I owe huge thanks to the friendship and support I receive from all my colleagues, and especially from my Head of Department John Parker. I must also include a very special note of thanks to Shabnum Tejani, with whom it is simply a privilege and pleasure to work.

I received skilled assistance and help in my research from the staff of the Oriental and India Office Collections at the British Library in London; the University and Squire Law Libraries in Cambridge; the SOAS Library in London; and the National Archives of India and the Nehru Memorial Library in Delhi. Kevin Greenbank, Barbara Roe, Rachel Rowe and Jan Thulbourn at the Centre of South Asian Studies in Cambridge went far beyond the call of duty, providing me with a critical institutional and intellectual home during my time at Cambridge. At Cambridge University Press (CUP), I would like to thank Marigold Ackland for accepting my proposal, and Lucy Rhymer and Rachel Cox for all their hard work and huge patience in overseeing this book's production. I am also very grateful to the copy editorial team at CUP who have helped to make this book much more professional, consistent and correct than it would have been otherwise. Any errors that remain are, of course, my own.

Many of the arguments that make their way into this book have grown out of intense discussion with Taylor Sherman. I am immensely grateful for her friendship and intellectual generosity, which helped to ensure both my productivity and my mental health during several long research trips in India. Jennifer Davis has provided me with something that goes far beyond friendship. A source of sage advice and critical insight, her ideas and input have influenced my thinking in ways that I cannot properly acknowledge in the pages that follow. Manu Goswami was the most generous host in New York, providing both academic and extra-curricular engagement as well as a number of amazing meals. Thanks are also due to Greg Grandin for allowing me to use his office during my stay – a place of calm peace where I was able to prepare the earliest draft of this manuscript. I am very grateful to Leigh Denault, Mitra Sharafi and Rohit De, all of whom have played formative roles in helping me to shape my project and to think in more sophisticated ways about legal history.

Over the last decade, I have benefited greatly from discussions with eminent colleagues and teachers. In particular I would like to thank David Arnold, Chris Bayly, Fasial Devji, Durba Ghosh, Dilip Menon, Polly O'Hanlon, Francesca Orsini, Peter Robb, Emma Rothschild, Mrinalini Sinha, Samita Sen and Amartya Sen.

Constraints of space, and perhaps my own English character, prevent me from detailing my individual debts to the wonderful friends and

colleagues I have made in the course of writing this book, but I am well aware of how much poorer my intellectual and social life would be without Sadaf Aziz, Rachel Berger, Joel Cabrita, Chanchal Dadlani, Emma Hunter, Humeira Iqtidar, Justin Jones, Sunalini Kumar, Stephen Legg, Rosie Peppin-Vaughn, Mina Rajagopalan, Pedro Ramos-Pinto, Nate Roberts, Uditi Sen, Ornit Shani, Penny Sinanoglou, Rupa Viswanath, Erica Wald and Philippa Williams. I am also most grateful to Vikram and Anu Sharma and their family in Delhi for looking after me so well over many years during my trips to India.

The theme of 'family' has been as important for the production of the book as it is central to its argument. The support I have received from my mother, father and step-father has sustained me throughout my studies and the writing of this manuscript. Their willingness to read drafts and rehearse my thoughts and arguments with me is truly remarkable. Dedicating this book to them feels like a small gesture that only begins to convey my sense of gratitude. I would also like to thank my sister, Flora, for being so willing to talk through aspects of Hindu law and income tax, but also for knowing when it was time to bring such conversations to a close and engage with other important aspects of life. The extension of my family in recent years has brought me fantastic in-laws and I would like to thank Richard and Honor for all their care and support. Last, but by no means least, I would like to thank Matthew, for real partnership and for making everything so straightforward.

Maps

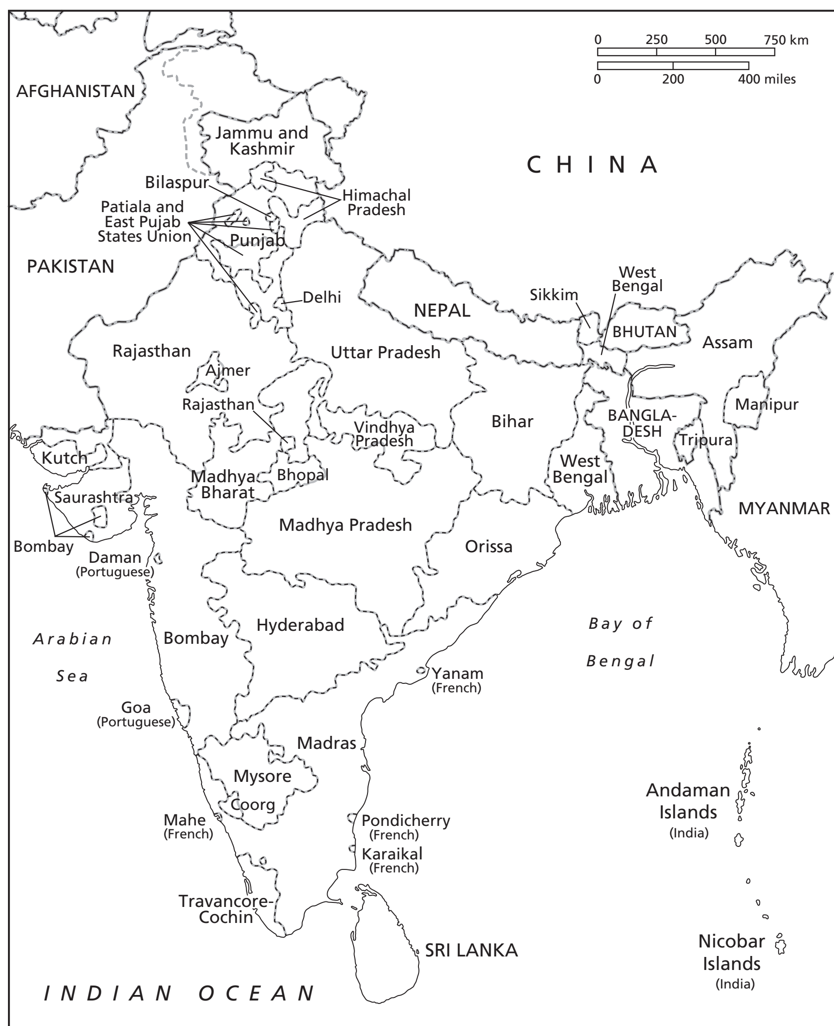
Tables

Abbreviations

AICC	All-India Congress Committee
AIR	*All India Reporter*
	[All] – Allahabad Court
	[Bom] – Bombay Court
	[Cal] – Calcutta Court
	[Mad] – Madras Court
AIWC	All-India Women's Conference
Bom L.R.	*Bombay Law Reports*
CAID	*Constituent Assembly of India Debates*
CAI(L)D	*Constituent Assembly of India (Legislative) Debates*
CSD	*Council of State Debate*
EPW	*Economic and Political Weekly Journal*
HLRRA	Hindu Law Research and Reform Association
IA	*Law Reports – Indian Appeals*
IESHR	Indian Economic and Social History Review (Journal)
IOR	India Office Records, British Library, London
ITR	Income Tax Reports
LAD	*Legislative Assembly Debates*
LCD	*Legislative Council Debates*
LSD	*Lok Sabha Debates*
MLJ	Madras Law Journal
	[FC] – Federal Court
NAI	National Archives of India
NMML	Nehru Memorial Museum and Library, New Delhi
PD	*Parliamentary Debates*
SWJN	*Selected Works of Jawaharlal Nehru*
UCC	Uniform Civil Code
UP	Uttar Pradesh



Map 1 British India 1909



Map 2 India 1951

Introduction: Hindu law, family and Indian democracy

This book traces the turbulent history of a single legislative project to bring new insight to our understanding of the emergence of democratic citizenship in India. It examines the origins and development of the Hindu Code Bill, a measure that sought to reform and codify Hindu personal law, that is the system of family law to which Indian Hindus, Sikhs, Buddhists and Jains are understood to adhere.[1] The conventional narrative about the Hindu Code Bill is that work on the Code began in the final years of British rule, following the Government of India's appointment of a committee of Hindu legal experts to look into and report on the state of Hindu family law in January 1941. But the Code was not passed by the Indian legislature until the mid 1950s. Most of the studies that have looked at the Code Bill so far have understood it as a 'women's Bill', drawn up to 'modernise' Hindu law by breaking with the patriarchal structures of colonial law in order to improve Hindu women's legal rights within the family.[2] At the hands of the Indian legislature, however, the modernisation project was arrogated by male representatives who considered other concerns, including economic

[1] The Code Bill legislation was drawn up to apply to 'all persons professing the Hindu religion in any of its forms or developments . . . to persons professing the Buddhist, Jaina or Sikh religion' and on the presumption that 'until the contrary is proved, that the whole of this Code applies to any person who is not a Muslim, Christian, Parsi or Jew by religion', but quite who is governed by Hindu law was and remains a controversial question. M. Galanter, 'Hinduism, secularism and the Indian judiciary', *Philosophy East and West*, 21, 4 (October, 1971), pp. 467–487; F. Agnes, *Law and gender inequality: the politics of women's rights in India* (New Delhi, 1999), pp. 22–26.

[2] J. M. Everett, *Women and social change in India* (Delhi, 1981); L. Sarkar, 'Jawaharlal Nehru and the Hindu Code Bill', in B. R. Nanda (ed.), *Indian women* (New Delhi, 1976), pp. 87–98; A. Parashar, *Women and family law reform in India* (Delhi, 1992); R. Kumar, *The history of doing* (Delhi, 1993), pp. 97–99; R. Som, 'Jawaharlal Nehru and the Hindu Code Bill', *Modern Asian Studies*, 28, 1 (1994), pp. 165–195; G. Forbes, *Women in modern India* (Cambridge, 1996), pp. 112–119; P. Pardeshi, 'The Hindu Code Bill for the liberation of women', in A. Rao (ed.), *Gender and caste* (New Delhi, 2003), pp. 346–362; C. Sinha, 'Hindu Code Bill (1941–56) and feminist consciousness in Bombay', Unpublished PhD thesis, University of Mumbai, 2004; C. Sinha, 'Images of motherhood: the Hindu Code Bill discourse', *EPW*, 42, 43 (27 October–2 November 2007), pp. 49–57.

development, national integration and preservation of religious community, as more important for the emergence of modern India than women's rights.[3] As such, the final outcome of the Code Bill project has been seen as a limited step towards gender equality at best and as evidence of the state's lack of commitment to women's rights and the democratic principles of social equality at worst.

This book offers a different account of the Code Bill and its modernising drive. Tracing its origins back to the economic pressures of the First World War, it argues that the most powerful set of interests driving the Code was concerned not with gender equality but with a desire to rationalise the Hindu family as an economic unit. This is not simply to claim that economic interests 'trumped' gender equality in the formation of Indian democracy; rather it is an argument that we must see democracy differently – as a mode of government that comprises not a political rights regime *and* particular economic formations but one which operates through structures that are simultaneously grounded in both. This book sees the Code Bill project as part of the broader shifts in the framework of state governance in India that were triggered by the First World War. The devolution of power to Indians in this period destabilised existing understandings of the relationship between Indian society and state power and therefore also of the frameworks through which this relationship was seen to operate, frameworks structured around notions of the economy, citizenship and secularism. This book shows how gender relations – not simply women's rights but the relationship between men and women, and different groups of men and thus also the family, as the key site of such relations – were integral to the constitution of all of these different aspects of the state–society framework.

Seeking to establish a clear model of Hindu family relations, the Code Bill project played a critical role in resolving the ruptures opened up by devolution, establishing a legal definition of the family that helped to constitute, but was also constituted by, the framework of economy, citizenship and secularism emerging at this point. To see the Code Bill only as a 'women's Bill' is to miss its wider significance for postcolonial governance in India. The Code Bill was not a vehicle for a struggle between economic and political conceptions of citizenship, or between state and social 'interests' that existed *prior to* the Code; it was through

[3] L. Sarkar, 'Jawaharlal Nehru and the Hindu Code Bill', in B. R. Nanda (ed.), *Indian women* (New Delhi, 1976), pp. 87–98; G. Forbes, *Women in modern India* (Cambridge, 1996), pp. 115–119; for a detailed description of the various factors pitted against the Code Bill see R. Som, 'Jawaharlal Nehru and the Hindu Code Bill: a victory of symbol over substance', pp. 172–173.

the passage of the Code Bill legislation that state power and its relationship to Indian 'society', 'citizens' and the 'economy' came to be defined. Tracing the history of the Code Bill from this perspective, this book brings new insight to our understanding of India's transition from colony to liberal democracy, as well as to our understanding of gender in relation to this process.

This discussion of democratisation focuses not on an abstract or universal form of government but on the particular configuration of representative government that emerged in India during the first half of the twentieth century. Making direct election the basis of all levels of government, from the local boards to the national legislatures, the 1919 Government of India Act was a 'watershed in the evolution of representative politics' in India.[4] But key aspects of these reforms, most notably the structure of Indian electorates under the Act, were heavily shaped by developments in the three decades that preceded the First World War. Since the late nineteenth century, the colonial administration had faced mounting pressure from elite Indians who demanded a greater share of political power. For British officials, a central question arising from this demand was to whom to devolve power. From the outset of British rule, India had been seen as comprising not a society of individuals but a collection of different communities, bound first and foremost by religious identity.[5] It was argued that such a framework was ill suited to the model of electoral politics used in the metropole and, by this time, in many other British colonies, which was based on the principle of one person, one vote.[6] The 1892 Indian Councils Act opened up a minority of seats in the provincial councils and Indian legislature to Indian representatives who were selected only on an indirect basis, through official government nomination or on the recommendation of certain bodies rather than individual voters. The 1909 Government of India Act took this process further. A number of nominated official and unofficial representatives, at both the provincial and all-India levels of government, were retained, but a new category of elected representatives was added to these councils and legislatures. Significantly, the Act made specific

[4] J. Chiriyankandath, '"Democracy" under the Raj', in N. G. Jayal (ed.), *Democracy in India* (New Delhi, 2001), p. 59.

[5] C. A. Bayly, *Indian society and the making of the British Empire* (Cambridge, 1988), especially Chapter 1; T. Metcalf, *Ideologies of the Raj* (Cambridge, 1994); G. Prakash, 'The colonial genealogy of society', in P. Joyce (ed.), *The social question* (London, 2002), pp. 81–96; R. Travers, *Ideology and empire in eighteenth-century India* (Cambridge, 2007).

[6] P. Knaplund, 'Great Britain and the British Empire', in F. H. Hinsley (ed.), *Material progress and world-wide problems 1870–1898* (Cambridge, 1962), pp. 383–410; S. Tejani, *Indian secularism* (Bloomington, Ind., 2008), Chapter 3.

identities, as well as narrow property qualifications, the basis of this new franchise, establishing electorates for Muslims and landlords as well as a 'general' electorate.[7] The 1919 Government of India Act dramatically expanded the number of elected seats in the provincial and all-India legislatures, as well as the number of people who could vote for these representatives (though this remained an extremely small section of the general populace, with just below 3 per cent of Indians eligible to vote at the provincial level and an even smaller number entitled to elect central representatives). The system of separate electorates was retained under the 1935 Government of India Act, which expanded the franchise so that around one fifth of the adult population could vote, an arrangement which remained in place until the withdrawal of British power in 1947.[8]

The interwar reforms fall far short of the universal franchise that we consider the hallmark of democracy today and which was introduced to India only after independence in 1950. Even so, in drawing Indian representatives into a state structure that from the beginning of colonial rule had acted on but existed outside Indian social relations, these changes fundamentally transformed the relationship between state power and society in India. In looking at this period, scholars have focused particularly on how devolution reshaped and politicised the notions of religious identity that had been integral to the structures of colonial rule from its outset.[9] The East India Company established its authority over all temporal matters, but, as a marker of the Company State's enlightened tolerance, Warren Hastings, the first Governor General of India, set out a Plan for the Administration of Justice which established that 'in all suits regarding inheritance, marriage, caste, and other religious usages, or institutions, the laws of the Koran with respect to Mahomedans, and those of the Shaster with respect to the Gentoos [Hindus], shall be invariably adhered to'.[10] This ruling established Indian religions as synonymous with, and primarily constituted through, the regulation of family relationships. Determined not by a state legislature but according to the religious, caste, gender and regional identity of a subject, these

[7] Tejani, *Indian secularism* (Bloomington, Ind., 2008), Chapter 3; Chiriyankandath, '"Democracy" under the Raj', p. 58.
[8] Chiriyankandath, '"Democracy" under the Raj', pp. 59–78.
[9] See, for example, S. Freitag, *Collective action and community: public arenas and the emergence of communalism in north India* (Berkeley, Calif., 1989); M. Hasan, *Nationalism and communal politics in India, 1885–1930* (New Delhi, 1991); G. Pandey, *The construction of communalism in colonial north India* (New Delhi, 1992); W. Gould, *Hindu nationalism and the language of politics in late colonial India* (Cambridge, 2004); Tejani, *Indian secularism*.
[10] Cited in W. H. Morley, *The administration of justice in British India* (London, 1858), p. 178.

rules were called personal laws because they were thought to rest in the body of the person, not the state. At the same time, administered by colonial courts, these laws were not independent of the political authority of the state. 'Religion', in this legal form, was managed by the colonial state through processes that separated it from the purportedly non-religious field of state political power. Devolution was a shift, then, because it granted political authority to representatives of peoples who were defined exclusively in terms of religious identity.

Devolution and the modern Indian state

Different scholarly understandings of the colonial project in general, and specifically of the relationship between colonial authority and the Indians it governed *before* the interwar years, have produced different understandings of the process of devolution and its legacy for Indian history. Comparisons between the colonial state and its European equivalent have given rise to a view of the former as a distortion of the liberal ideal, promising rights and change on the one hand, while on the other hand either restraining Indian society within novel and rigid socio-religious categories or simply adopting a policy of benign neglect.[11] From this perspective, the interwar years can be seen as a moment when powerful Indian social groups, frustrated at the way in which they had been held back by colonialism, wrested control of this warped state structure for themselves. While these groups drew on the liberal language of nationhood and rights to challenge the state, their own power was limited by conditions not entirely dissimilar to those faced by the colonial administration: a concern about the social unrest that raising taxation could produce and a sense that their power rested on preserving, rather than undoing, the illiberal social structures through which the state acted. The interwar period, then, saw the nationalising of a very particular kind of colonial state structure.[12] The postcolonial state today can be seen as a continuation of this mode of governance, promising social reform but lacking the strong social base to enact its reformist policies

[11] B. Cohn, 'From Indian status to British contract', *The Journal of Economic History*, 21, 4 (December, 1961), pp. 613–628; D. Washbrook, 'Law, state and agrarian society', *Modern Asian Studies*, 15, 3 (1981), pp. 649–721; R. O'Hanlon, 'Issues of widowhood', in D. Haynes and G. Prakash (eds.), *Contesting power* (New Delhi, 1991), pp. 62–108; R. Guha, *Dominance without hegemony: history and power in colonial India* (Cambridge, Mass., 1997).

[12] C. J. Baker, *An Indian rural economy* (Oxford, 1964), Chapter 6; D. Washbrook, 'Law, state and agrarian society'; R. Guha, *Dominance without hegemony: history and power in colonial India*.

on the ground. This is an argument I have made in an earlier working out of the history of the Code Bill but from which this book departs.[13]

This view of the colonial state has been critiqued by scholars who have highlighted the way in which many Indians responded to colonialism not by embracing the liberal ideals in which colonial power was framed but by developing their own arguments about Indian identity and its foundation that fundamentally challenged universalist liberal claims.[14] In an essay that has become part of the foundational framework for understanding modern South Asian history, Partha Chatterjee has argued that the late nineteenth century brought about a shift in the location of the elite nationalist project from the political to the religious space of the family. He sees the move in elite Bengali discourse away from discussions about the improvement of women's place in Indian society in this period as evidence of a turning away from liberalism, rather than from women's interests as such. Feeling increasingly marginalised in the political realm, Bengali elites came to regard the family and domestic space as a site of religious purity and indigenous strength and, as such, the proper place for the foundation of a new nation. Women's education remained a key preoccupation of the nationalist elite, but was now defined in terms of practices that would strengthen and defend the religious domestic space in which a distinctly Indian nation was to be developed rather than in the supposedly 'universal' terms of western conceptions of social progress.[15] At the end of this essay, Chatterjee speculates about the impact of independence on this inherently Hindu nation-building process. Referring to the political debates about state intervention in Muslim personal law that were raging at the time he wrote the essay, Chatterjee likens the position of contemporary Indian Muslim opponents of reform to that of the nineteenth-century Bengali elites he discusses.[16] Without commenting on the complexities of interwar devolution, Chatterjee sees the post-colonial Indian state as rising out of and operating through the framework of this Hindu conception of the nation.

Feminist scholarship has provided a critical intervention in these discussions by drawing attention to the ways in which colonial rule marginalised women, not simply by making them subjects of domination in the religious sphere but through the framework of liberal subjecthood that

[13] E. Newbigin, 'A post-colonial patriarchy?', *Modern Asian Studies*, 44, 1 (2010), pp. 121–144; see also S. Kaviraj, 'On state, society and discourse in India', in J. Manor (ed.), *Rethinking third world politics* (London, 1991), pp. 72–99.

[14] See especially P. Chatterjee, *Nationalist thought and the colonial world* (London, 1986).

[15] P. Chatterjee, 'The resolution of the women's question', in K. Sangari and S. Vaid (eds.), *Recasting women: essays in colonial history* (New Delhi, 1989), pp. 233–253.

[16] Ibid, pp. 250–251.

underpinned all aspects of colonial governance, including the political realm.[17] These studies have shown how British assumptions that holding property was an exclusively male capacity did much to reinforce Indian women's legal subordination, as their place within the family and society at large was reconstituted exclusively in terms of their relationship with men – women were seen to *belong* to a family or community, they were not members in their own right. This marginalisation of women was not the result of patriarchal constructions of religious identity but produced through the legal structure that legitimised and structured colonial state governance as a whole.[18]

Studies of liberalism and its relationship with empire have taken these arguments a step further, demonstrating that these developments reflect the operation of liberal governance in general, not only in South Asia.[19] These works have examined the ways in which the construction of the abstract figure of the universal rights-bearing individual at the heart of liberalism required a corresponding management of the social and bodily differences that structured human relations in everyday life. In other words, the very possibility of human equality rested on processes that compared and contrasted bodies and practices in ways that reinforced a non-equivalent relationship between them.[20] In India, liberal imperialism established that Indians were 'equivalent' enough to Britons to be subject to the 'political' authority of the latter, but their differences from Britons in terms of their 'social' practices made them incapable of exercising this political authority themselves. Thus British political authority in India was constructed in relation to and rested on a particular conception of Indian society as a domain that was connected to the realm of the political by its intrinsic difference from it. Within this framework, the

[17] I. Chatterjee, *Gender, slavery and law in colonial India* (New Delhi, 1999); G. Arunima, *There comes papa: colonialism and the transformation of matriliny in Kerala, Malabar c. 1850–1940* (Hyderabad, 2003); essays in I. Chatterjee (ed.), *Unfamiliar relations: family and history of South Asia* (New Jersey, 2004), pp. 95–121; D. Ghosh, *Sex and the family in colonial India* (Cambridge, 2006); M. Sreenivas, *Wives, widows and concubines: the conjugal family ideal in colonial India* (Bloomington, Ind., 2008), Chapter 1; R. Sturman, *The government of social life in colonial India: liberalism, religious law, and women's rights* (Cambridge, 2012).

[18] M. R. Anderson, 'Work construed', in P. Robb (ed.), *Dalit movements and the meaning of labour in India* (Delhi, 1993), pp. 87–120; J. Nair, *Women and law in colonial India* (New Delhi, 1996); U. Chakravarti, *Rewriting history* (New Delhi, 1998); S. Sen, 'Offences against marriage', in M. E. John and J. Nair (eds.), *A question of silence?* (New Delhi, 1998), pp. 77–110; S. Sen, *Women and labour in late colonial India: the Bengal jute industry* (Cambridge, 1999).

[19] U. S. Mehta, *Liberalism and empire* (Chicago, 1999); M. Goswami, *Producing India* (New Delhi, 2004).

[20] J. Scott, *Gender and the politics of history* (New York, 1989) and J. Scott, *Only paradoxes to offer* (Cambridge, Mass., London, 1996).

category of womanhood took on particular salience as a 'universal' group in an abstract sense that was, in practice, made up of highly diverse members.[21] As such, 'womanhood' became critical in this process of equivalence and exclusion as a marker not only of British and Indian identity but of their difference, as well as of the differences within Indian society, as it was represented to and by the colonial state.

On this basis, Mrinalini Sinha has argued that political devolution in India opened up not simply Indian society's relationship with the Indian state but also the logic through which Indian social structures were compared with and understood to relate to the terms of political authority. She argues that devolution in the interwar years aligned the space of Hindu 'community' with the structures of state power in India, though not in the ways Chatterjee suggests. Whereas Chatterjee seems to suggest a linear trajectory for the unification of religious nation and political state at independence, Sinha stresses the historically contingent and unpredictable way in which these two were brought together, showing how political change in India was itself bound up with global transformations.

She identifies the controversy that surrounded the publication of Katherine Mayo's *Mother India* in 1927 as a 'creative event' which 'ruptured' perceptions of India as a collection of religious communities by giving rise to a new political category of Indian womanhood that transcended class, caste and religious division.[22] A strong opponent of devolution in India, and in the colonies under the control of her own, American, government, Mayo argued that Indian, but primarily Hindu, social practices were the cause of Indian backwardness. As such, only Indians could remedy these problems, which lay beyond the purview of the colonial state's political authority. Until they did so (a process that, on the basis of Mayo's reading of what constituted Hinduism, seemed to include renouncing adherence to this faith altogether), Indians were not fit to wield political power themselves.[23] Sinha examines male nationalists' response to Mayo's claims, showing how their attempts to demonstrate that they were more able and willing to tackle India's social ills than the colonial state led to widespread support for Rai Harbilis Sarda's Child Marriage Restraint Bill, passed in 1929, which established marriage below the age of fourteen for girls and eighteen for boys as a criminal offence, regardless of the couple's religious customs or laws.

[21] Rachel Sturman offers an excellent discussion of this point in the introduction of her *The government of social life in colonial India: liberalism, religious law and women's rights* (Cambridge, 2012).
[22] M. Sinha, *Specters of Mother India* (Durham, N.C., 2006), especially pp. 5–12.
[23] K. Mayo, *Selections from Mother India*, Mrinalini Sinha (ed.) (Delhi, 1998).

Indian women mobilised around the Bill to carve out and realise a new constituency in Indian politics, that of 'women' freed from all religious markers. But such a category was not sustainable for long. As Sinha shows, in the discussions about political reform that followed the Sarda Act, the (Hindu) majority of members of women's organisations opted to support Congress's calls for a joint electorate, without communal representation, on the grounds that this would shore up the new women's constituency, as one that operated free from religious distinctions. Such a position did much to alienate lower-caste Indians and Muslims, who feared such an electorate would lead to Hindu political majoritarianism. The subsequent debates served to equate the liberal language of women's rights with Hindu-dominated nationalism while Indian Muslims came to be defined as a community that wished to subsume women's autonomy to religious, group identity. Sinha traces the ways in which a colonial liberalism, grounded in a language of universal rights focused on the white man, gave way to a form of Hindu-centric liberalism, a language of universal rights focused on the upper-caste, elite Hindu man.

This book builds on but seeks to offer a broader context for Sinha's arguments about the interwar period. It argues that while the events surrounding the publication of *Mother India* gave rise to a new language of rights, the emergence of a Hindu-centric liberal subject in this period was the result of profound, and by no means inevitable, shifts in the political, but even more importantly the economic, structures of Indian state power. Beginning in 1916 and running through to the 1950s, it shows how the financial policies that underpinned the expansion of government and political representation in this period served to open up questions about the structure of Hindu law in ways that drew upper-caste, north Indian Hindu men into closer relationship with state power. In so doing it confirms what Ritu Birla and Rachel Sturman have demonstrated in their recent and important works, that the task of economic management was profoundly bound up with the governance of Indian society and the structures of personal law.

Looking at the development of colonial commercial and contract law between 1870 and 1930, Birla shows how the Hindu family firm came to be constructed as both equivalent and inferior to European-owned firms that were seen to operate in closer conjunction with the abstract image of 'liberal economic man', an individual who operated within mechanisms of exchange framed in the 'universal' language of contract rather than local customs or 'culture'.[24] The object of state scrutiny and criticism under

[24] R. Birla, *Stages of capital: law, culture and market governance is late colonial India* (Durham and London, 2009).

British rule, the Hindu family firm went on to become the basis of a specifically Indian model of modern economy, which was culturally distinct from its colonial, 'universal' counterpart even as it operated within the same legal–economic framework.

Sturman's detailed and comprehensive study of the development and transformation of Hindu law between the 1810s and the 1940s observes similar transformations argument even further.[25] Looking at the impact of contemporary liberal political economic theory on Indian case law, she shows how colonial legal intervention reconstructed Hindu law as antithetical to, but therefore comparable with, the structures and ends of liberalism; Hindu law was reconfigured in relation to the intellectual terrain of liberal ideology, as a structure that was marked by its *illiberal* practices, in particular those relating to property rights and women's status. Just as the spaces of socio-religious and state power should not be seen as two distinct domains, colonial Hindu law was constituted by and through the political and economic legal structures that undergirded liberal state power.

Hindu law and the political economy of democratic governance

This book argues that the Hindu Code Bill was an attempt to consolidate and embed a new model of Hindu law that operated in consonance with the political economy of representative government that emerged in India in the first half of the twentieth century. This reflects a divergence from the conventional historical periodisation of late colonial South Asian history.[26] Both Sturman and Birla highlight the late nineteenth century as a time of real shift in terms of the administration's attempts to systemise and rationalise both its own institutions and its view of the society it governed.[27] Their studies continue into the early twentieth century and interwar years without fully considering the ways in which devolution of political authority affected not simply the composition of the Indian state but also the structures through which it interacted with Indian society, beyond the courts and legislatures. At the same time, as is standard practice among historians of South Asia, these studies stop before the watershed of independence in 1947, making only brief comments about the implication of their work for the postcolonial state in

[25] R. Sturman, *The government of social life in colonial India*.
[26] This book is not, however, unique in doing so. Shabnum Tejani's study of secularism and communalism in late colonial India follows a similar chronological framework – see S. Tejani, *Indian secularism*.
[27] Ibid, p. 17; Birla, *Stages of capital*, pp. 4–5.

their concluding pages.[28] This book offers a different chronology for our understanding of the modern Indian state, one that begins during the First World War and runs up until the mid 1950s. This is not to say, of course, that 1947 is of little significance to this history; the end of colonial rule and transition to independence transformed the political and fiscal outlook of the Indian state, while partition also did much to strengthen the bond, perceived and actual, between the apparatus of the Indian state on the one hand and Hindu (legal) identity and community structures on the other. But rather than as a major turning point in the development of democratic state power, these events can be seen as heightening or amplifying processes and tendencies that were already present. This is certainly not to suggest that either the end of British rule or the partition of the subcontinent was inevitable but rather that these events did not fundamentally disrupt the notions of political rationale through which state governance had come to operate.[29] The Republican Constitution of 1950 and the first general elections of 1951 granted voting rights to all Indians over the age of twenty-one, regardless of their wealth. But Indian voters elected representatives to state structures that had evolved in conjunction with the interests and claims of the wealthy few and which approached Indian society and the task of governance through a framework that was bound up with a notion of the citizen-subject defined according to a particular legal–economic agenda.[30]

In foregrounding the relationship between taxation and political representation this book offers a profound re-reading of a period that has already received much scholarly attention. While questions of political economy have been shown to be critical to the development of legal rights in nineteenth-century India, there have been few attempts to examine the financial aspects of political devolution, or even to look at how new state structures were paid for.[31] A recent work on the politics

[28] Some examples of other works on gender and women's history specifically that follow this periodisation are Sen, *Women and labour in late colonial India*; G. Arunima, *There comes papa*; M. Sinha, *Specters of Mother India*; M. Sreenivas, *Wives, widows and concubines*. But this tendency to see 1947 as a critical marker in South Asian history is by no means isolated to this specific historical field – see the discussion on this aspect of South Asian historiography in T. C. Sherman, W. Gould and S. Ansari, 'From subjects to citizens: society and the everyday state in India and Pakistan, 1947–1970', *Modern Asian Studies*, 45, 1 (2011), pp. 1–6.

[29] R. Chandavarkar, 'Customs of governance: colonialism and democracy in twentieth century India', *Modern Asian Studies*, 41, 3 (2007), pp. 441–470.

[30] P. Chatterjee, *The politics of the governed: reflections on popular politics in most of the world* (New York, 2004) and his 'Democracy and economic transformation in India', *EPW*, 43, 16 (19 April 2008), pp. 53–62.

[31] The relationship between political-economy aid nationalist politics is the interwar period was a central feature of many of the earlier studies, particularly those associated with the

and evolution of the 1935 Government of India Act makes no reference to the very complex debates about fiscal finances that accompanied the Act and delayed its implementation by two years.[32] Yet the political rights that were granted to Indians during the interwar years were also profoundly economic rights, or at least founded on a specific economic relationship with the state.

From 1916, the colonial administration needed to extract revenue from its subjects to pay first for the war effort and, later, for the expansion of the legislatures and public works programme that the 1919 Government of India Act put in place. Like the administrations of many of the other powers involved in the First World War, the Government of India, in these conditions, opted to expand its systems of direct taxation through the introduction of systems of progressive taxation whereby the proportion of tax paid rose in correlation with a taxpayer's income.[33] Levied exclusively on non-agricultural incomes, this form of taxation targeted Indian professionals and merchants, some of whom were seen to be profiting from the war effort. As such it was a more responsive and flexible form of revenue than land taxes. In most cases, progressive taxation led the administration to monitor more closely the income of individual subjects. But not in the case of the Hindu family. Colonial officials had long regarded the Hindu family as highly peculiar, particularly in relation to the manner in which it held property, which was as a single but multi-membered unit. The new income tax laws provided even greater incentive for the administration to insist that the Hindu family existed as a single, taxable collective rather than as individual payees.

'Cambridge school', such as J. Gallagher and A. Seal, 'Britain and India between the wars', *Modern Asian Studies*, 15, 3 (1981), pp. 387–414; Washbrook, 'Law, state and agrarian society'; see also B. R. Tomlinson, 'The political economy of the Raj', *The Journal of Economic History*, 42, 1 (March, 1982), pp. 133–137, and his *The economy of modern India 1860–1970* (Cambridge, 1993), but has not been a feature of more contemporary studies of india's interwar year. This of course reflects much broader histerio-graphical shifts, including the growing divide between what are now two distinct fields of (social) history and economic history. On this, see T. Roy. *Rethinking economic change in India: labour and livelihood* (London, 2005), pp. 14–19; P. Parthasarathi, *Why Europe grew rich and Asia did not: global economic divergence 1600–1850* (Cambridge, 2011), Introduction.

[32] A. Muldoon, *Empire, politics and the creation of the 1935 India Act* (Farnham, 2009). One of the few detailed descriptions I have been able to find of this aspect of the 1935 Act appears in P. J. Thomas, *The growth of federal finance in India* (Madras, 1939), Chapter 30.

[33] Both the British and US governments adjusted their tax policies in similar ways in this period – see M. Daunton, *Just taxes: the politics of taxation in Britain, 1914–1979* (Cambridge, 2002), especially Chapters 1, 2 and 3; on the United States see W. E. Brownlee, 'Economists and the formation of the modern tax system in the United States', in M. O. Furner and B. Supple (eds.), *The state and economic knowledge* (Cambridge, 1990), pp. 401–435.

Birla has discussed this aspect of colonial taxation policy but, looking at how market governance shaped notions of Indian cultural identity in the longer term, she does not comment on the specific wartime conditions that drove revenue policy in this period.[34] Though officials had taxed the Hindu family as a collective before the First World War, the second chapter of this book shows how the shift from a fixed-rate tax system to a stepped model in 1916 transformed the nature of this policy: as wealthy Hindu families saw their income tax bill rise dramatically overnight, colonial finance officers faced considerable pressure to define more clearly the precise way in which they read and applied Hindu property law.

In addition to the structure of the colonial legal system, the historical division of political and financial responsibility within the Indian state did much to shape the dynamic of these developments in ways that promoted legal centralisation. Unlike land revenue, which operated according to regional settlements and practices, income tax and the majority of other forms of direct taxation were administered centrally by the Government of India. The policy of taxing the income of the Hindu family as a single collective was therefore premised on the notion that Hindu families across India held property in the same way. Yet, while the religious basis of the colonial legal systems seemed to suggest broadly centralised bodies of Hindu and Muslim law, these legal systems were in fact deeply regionalised and heterogeneous in practice. Historians have put much emphasis on the primacy given to textual knowledge under colonial rule. Religious scripture was interpreted by colonial jurists as an unyielding source of law and body of knowledge that existed beyond the communities it governed and thus could also be applied by external forces.[35] But custom was also subjected to similar processes of codification, often through the very processes that celebrated it as an alternative, and preferred, means of social regulation.[36] The operation of the colonial court system and provincial councils themselves added further regional

[34] Birla, *Stages of capital*, pp. 53–60, 204–212.

[35] J. D. M. Derrett, *Religion, law and the state in India* (London, 1968), pp. 229–320; M. Galanter, 'The displacement of traditional law in modern India', in his *Law and society in modern India*, ed. R. Dhavan (New Delhi, 1997), pp. 15–36; M. R. Anderson, 'Islamic law and the colonial encounter in British India', in D. Arnold and P. Robb (eds.), *Institutions and ideologies* (London, 1993), pp. 165–185; B. Cohn, *Colonialism and its forms of knowledge: the British in India* (Princeton, 1996), Chapter 3; S. A. Kugle, 'Framed, blamed and renamed: the recasting of Islamic jurisprudence in colonial South Asia', *Modern Asian Studies*, 35, 2 (2001), pp. 257–313.

[36] Derrett, *Religion, law and the state in India*, pp. 293, 305–307; R. Rocher, 'The creation of Anglo-Hindu law', in T. Lubin, D. R. Davis and J. K. Krishnan (eds.), *Hinduism and law* (Cambridge, 2010), p. 85; Sturman, *The government of social life*, Chapter 4.

inflection to the way in which indigenous practices were interpreted and recorded.[37] By the early twentieth century, therefore, both Muslim and Hindu law had undergone substantial transformation to become highly institutionalised, codified legal systems, but ones that remained de-centralised and internally non-homogeneous. As such, their operation presented complications for all-India-level finance officials struggling to draw up tax legislation that could be applied on a centralised basis in a manner that allowed for the collection of the maximum revenue possible, while avoiding loopholes or legal challenge from taxpayers.

Of course, against the backdrop of political reform and devolution, colonial officials were not the only figures shaping Indian finance policy. This book sees devolution, the development of taxation policy and the Hindu Code Bill project that arose out of it as indicative of new modes of governance that were evolving in India at this time. State expansion and representation not only required new policies and rationalised modes of interaction with 'society' and its representatives, it also created new mechanisms for the formulation of such techniques of government, which operated through state authority from above but also consent, coercion and resistance from below. Between 1916 and 1920, when Indian legislators took up their seats to form a slim legislative majority under the new constitution, the colonial administration pursued taxation policies framed heavily in its own fiscal interests, sparking considerable complaint from the small number of Hindu legislators who had already secured seats in the central legislature. But from the 1920s, the Indian state became a more complex structure as key aspects of colonial government passed into Indian hands. The terms of the franchise passed under the 1919 Government of India Act meant that many of the Indian representatives who took up their seats in the provincial and central legislatures were propertied men from precisely those sections of society affected by direct taxation. Yet this shift did not bring an end to colonial taxation policies, even those relating to the taxation of the Hindu family as a single unit. As legislators, wealthy Hindus used their representative power to exert force on the administration, drawing on their status as high taxpayers as leverage to secure state protection of their own financial and political interests. Even when they worked to limit the powers of the state's tax collectors, such negotiations did much to rationalise and render the structures of Hindu family life 'readable' for government policy in its broadest sense. The Hindu family, as a rationalised,

[37] See Chapter 1 and also Derrett, *Religion, law and the state in India*, pp. 274–320; Galanter, 'The displacement of traditional law in modern India'; Kugle, 'Framed, blamed and renamed'.

economic collective, thus became a central target of state power and policy, emerging alongside the individual taxpayer voter as a key 'subject' of the evolving representative state. The nationalised–colonial state that developed in the interwar years thus consisted of both individual citizen-subjects, construed in their capacity as taxpayers, and the Hindu family, a citizen-subject whose capacity as a taxpayer was intrinsically bound to its status under religious law. In this way, the history of the Hindu Code Bill project could be seen as an example of the processes that Michel Foucault and others have called 'governmentality'.[38]

The process of managing and equalising difference at the heart of liberal governance meant that shifts in this restructuring of colonial subjecthood also had consequences for the way in which the Indian Muslim 'community' and its laws were understood to relate to state power. This book tracks the way by which Muslim law was transformed from a legal system that was hailed as progressive and modern, from which others could learn, even in the late 1930s, to one seen as 'backward' and associated with a separatist 'minority', the legal recognition of which would seem to threaten the principles of secular democracy in post-independence India.[39] Colonial readings of Hindu and Muslim law developed along quite different trajectories. This was particularly true following the restructuring of the colonial legal system after the transfer of power to Crown rule in 1858, a restructuring that was deeply influenced by the ideas of the then Law Member, Sir Henry Sumner Maine, a figure who has recently attracted considerable scholarly attention.[40]

Maine held the post of Indian Law Member from 1863 to 1869, having already established his reputation as a scholar of civil and Roman law. Two years before going out to India, Maine published his *Ancient law: its connection with the early history of society, and its relation to modern ideas*, which set out a universal model of legal evolution in which authoritarian family collectives, under rigid patriarchal control, were gradually broken

[38] G. Burchell, C. Gordon and P. Miller (eds.), *The Foucault effect: studies in governmentality* (Chicago, 1991); M. Foucault, *Security, territory, population* (Basingstoke, 2007) and *The birth of biopolitics* (Basingstoke, 2008). See also N. Rose, *Inventing our selves* (Cambridge, 1996) and *Powers of freedom* (Cambridge, 1999).

[39] This point is discussed in more detail below, but see also Z. Hasan, 'Minority identity, Muslim Women Bill campaign and the political process', *EPW*, 24, 1 (7 January 1989), pp. 44–50; M. Mukhopadhyay, *Legally dispossessed: gender, identity and the process of law* (Calcutta, 1998); R. S. Rajan, 'Women between community and state: some implications of the uniform civil code debates in India', *Social Text*, 18, 4 (Winter, 2000), pp. 55–82.

[40] K. Mantena, *Alibis of empire* (Princeton, 2010); C. A. Bayly, *Indian thought in the age of liberalism and empire: Henry Maine and the ends of liberal imperialism* (Cambridge, 2012); Sturman, *The government of social life*. See also A. Diamond (ed.), *The Victorian achievement of Sir Henry Maine: a centennial reappraisal* (Cambridge, 1991).

down and their authority privatised, 'liberating' members to become the contracting individuals of liberal political theory.[41] Maine held up contemporary Hindu law as directly analogous to the Roman legal system, particularly in relation to its joint family structure governed by an authoritarian patriarch.[42] Maine devoted considerably less attention to Muslim law, including Anglo–Muslim or Muhammadan law as the colonial system of Muslim personal law was known in India, in this work. But the recognition of individual property rights, for women as well as for men, under Muslim law meant that, by Maine's own logic, it seemed to be much closer to the English legal system. The fact that the administration of Anglo–Muslim law and Indian Muslims themselves remained firmly under the authority of colonial state apparatus confirmed their non-modern status, but, at critical moments, colonial officials interpreted Anglo–Muslim law as a peculiar derivative of the 'universal' principles that underpinned the English legal system. This influenced the application of tax laws to Muslims – from 1919, wealthy Muslims were subjected to higher levels of taxation, like their Hindu counterparts, but the recognition of individual rights under Anglo–Muslim property law prevented the colonial administration from taxing Muslim family firms as a single collective. Whereas Hindus had to demonstrate their fitness for self-rule by freeing themselves from their religio-social structures in order to 'catch up' with European legal structures, the colonial legal system seemed to mark out Indian Muslims as potentially close to the colonising society in ways that, at times, seemed to threaten their religious identity. This book tracks the way in which ideological pressures and material conditions that served to 'liberalise' Hindu law encouraged Indian Muslims to stress their separateness from the structures of colonial rule, emphasising instead the profoundly religious, rather than sociological, basis of their legal system and identity.

The relationship between taxation and representative politics also had important implications for the way in which caste was understood to relate to Hindu identity and its position within the structures of representative government. This book traces how the devolution of power in the interwar years did much to sideline caste as the main feature of Hindu law (though not, of course, as a feature of everyday relations), a process that was consolidated by the passage of the Hindu Code Bill.[43]

[41] H. S. Maine, *Ancient law: its connection with the early history of society, and its relation to modern ideas* (London, 1861).
[42] Ibid, pp. 135–170.
[43] R. Sturman, 'Marriage and family in colonial Hindu law', in T. Lubin, D. R. Davis and J. K. Krishnan (eds.), *Hinduism and law: an introduction* (Cambridge, 2010), pp. 103–104; Anupama Rao has looked at how caste identity in the early twentieth century

The correlation of property rights with personhood and masculinity within the liberal legal framework ensured that gender, rather than caste, was the focus for law reform. Though Untouchable Hindu men may not have owned much property, the way in which colonial courts had read caste relations in terms of contractual right meant that they were not legally barred from doing so.[44] The shift to stepped taxation was designed to redistribute the tax burden across Indian society (and in so doing raise tax revenue yield) rather than to redistribute property itself. Thus, the colonial administration was little concerned with Untouchables' lack of material wealth. Hindu, though not Muslim, women, meanwhile, were understood to have no real rights to property at all. A franchise drawn up on property rights thus meant that Hindu women were legally barred from political subjecthood, while Untouchables' lack of voting rights could be seen to arise from individual economic circumstances. Just as in Britain, reform of women's property rights and campaigns for Indian women's franchise were deeply intertwined.[45] Chapter 3 looks at how the global financial depression of 1929, together with imperial monetary policy, had, by the mid 1930s, created conditions within which it was beneficial to the fiscal interests of the colonial–nationalist administration to grant property rights, but also tax responsibilities, to Hindu and Muslim women. These reforms did much to reinforce the distinction between Hindu and Muslim laws, and by extension those governed by them, while also constituting these 'communities' primarily in gendered terms.

This focus on gender as the defining feature of religious community did little to break down caste discrimination in practice. However, the importance for caste identity of regulating Hindu women's position within the family meant that the revision of women's property rights created conditions within which legislators might be more willing to consider the inclusion in the Code Bill of provisions that challenged caste hierarchy. Independent India's first Law Minister,

was reshaped around the axis of gender relations and its consequences for contemporary Indian society, 'Sexuality and the family form', *EPW*, 40, 8 (19–25 February 2005), pp. 715–718.

44 A. Rao, *The caste question: Dalits and the politics of modern India* (Berkeley, 2009), Chapter 2; Sturman, *The government of social life*, pp. 222–231.

45 L. Holcombe, *Wives and property: reform of the Married Women's Property Law in nineteenth-century England* (Oxford, 1983); M. Pugh, *The march of the women* (Oxford, 2000), especially Chapter 2; J. Rendall, 'John Stuart Mill, liberal politics and the movements for women's suffrage, 1865–1873', in A. Vickery (ed.), *Women, privilege and power* (Stanford, Calif., 2001), pp. 168–200. On the ways in which these British and Indian debates intersected see A. Burton, *Burdens of history: British feminists, Indian women and imperial culture, 1865–1915* (Chapel Hill, N.C. and London, 1994).

B. R. Ambedkar, who was himself a Dalit, has been widely seen as the figure who drafted the more controversial measures of the Code Bill, including its anti-caste provisions, though Chapters 4 and 5 of this book show that many of these provisions were in fact included in the initial draft of the Code Bill, drawn up by a team of elite Hindu jurists on the eve of the transfer of power.[46] This is in no way to suggest that Ambedkar played little or no role in the Code Bill's expansion but it is to flag the way in which the Code Bill project marked the intersection of a number of different forms of liberal rights claims. In her recent study of Dalit subject formation, Anupama Rao has shown how Untouchables 'became' Dalits through rights claims premised on liberal concerns about sentiment and suffering.[47] Individual Dalits were victimised because they were identified with a specific, stigmatised group. As a result, the language of the liberal individual was of little utility as it was unable to recognise the collective basis of Dalit suffering. Instead Dalits called on the state to recognise and grant them rights as a *non-Hindu* community, constituted through the collective experience of suffering inflicted by Hindus. Rao traces the ways by which this strategy not only bound Dalit rights to state authority and its structures but also made their operation central to postcolonial democratic governance, defining the Dalit as a citizen, but one that was marked by particular vulnerabilities, and therefore different and inferior to others. This book offers something of a tributary to Rao's argument, in that it focuses on the way in which the Hindu Code Bill removed caste from Hindu law, to establish the Dalits as a distinct group beyond its boundaries. At the same time, in making the Indian state the force through which Dalits could seek redress, Ambedkar's anti-caste politics did much to draw the emerging postcolonial state into closer direct relationship with the affairs and management of Hindus in a way not replicated in its relationship with the Muslim community.

Even if the postcolonial state was more closely identified with Hindu than with Muslim interests, huge questions remained about what constituted the former. The problems that regional differences in Hindu family practices posed for centralised governance had been one of the main issues driving the Code Bill project in the first place, and without the passage of codifying legislation, they remained unresolved. The expansion of the Indian legislatures with the move to a universal franchise

[46] See, for example, E. Zelliot, 'Dr. Ambedkar and the empowerment of women' and P. Pardeshi, 'The Hindu Code Bill for the liberation of women', both in A. Rao (ed.), *Gender and caste* (New Delhi, 2003), pp. 204–217 and pp. 346–362.

[47] Rao, *The caste question*.

created new imperatives to settle this dilemma but also created the context in which to do so. Following liberal principles, representative power in the central legislature was determined on the basis of state population size, thereby giving dominance to legislators from northern India. Reflecting their influence over the democratic legislative process, the Hindu Law Acts that were finally passed in the 1950s established upper-caste, north Indian practices as the basis of state-defined Hinduism. The Acts fully acknowledged and were made applicable to those people who called themselves Hindu but followed different family practices to those prescribed. But these practices were now seen as 'deviations' from an idealised Hinduism, as equivalent, and yet inferior or lesser, to the abstract Hindu subject. Defined and rationalised in these terms, the Hindu family was rendered highly compatible with the logic of state governance, in terms of the management of both political and economic conduct. By the mid 1950s, however, the ends to which such governance was directed had shifted significantly from those that had shaped the Code Bill project at its outset. No longer in thrall to the fiscal demands of the metropole, the postcolonial economy had come to be seen as something that needed to be nurtured and developed in the long term, rather than pressed for resources in the short term. Though it remained subject to special levels of taxation, the rationalised Hindu family also became a key model through which the government built up and managed the new economic reforms and projects that it argued would render India an economically and socially modern nation-state.

To return to the question of how we understand the project of liberalism, this is not an argument that the postcolonial government was able to pass the Law Acts and alter Hindu law in this way because it was more truly liberal or democratic than the colonial state. Rather, it is to argue that the Code Bill and Indian representative politics developed in this way because they were part of a framework of liberal governance that structured not only the operation of state power in India but also the wider field of international politics. The discussion of Indian democracy in this book is grounded in firmly historical terms, viewing it not as an abstract ideal but as a product of global political and economic developments in the first half of the twentieth century. The reverberations of these developments were felt in India but also throughout the world, most notably in those countries that today are often considered 'modern democracies', many of which also grappled with questions of taxation, franchise and representation in this period. The interwar period witnessed the emergence of new forms of economic governance on a global scale. By the end of the 1930s, governments across the world had set up departments to monitor and produce statistical data about local, national and even international trade,

earnings and employment.[48] This data was, in turn, ploughed back into government policy that operated in accordance with new notions of national economy and wealth, including terms such as national income and gross domestic product.[49] In this context, the history of the Hindu Code Bill must be read as an example of India's firm encapsulation within, rather than exclusion from, the field of liberal government. In other words, the manner in which the Code Bill served to embed Hindu majoritarianism as a defining feature of its democratic politics demonstrates the truly liberal, 'modern' nature of the postcolonial Indian state.

Secularism and democracy in India

This book concurs with the view that the 'Hinduisation' of state politics and issues surrounding Muslim minoritarianism do not reflect a crisis of liberal governance but are its product.[50] The argument that Hindu nationalism threatens democratic secularism is premised on an understanding of secularism as an arrangement in which religion is clearly divided from non-religious authority, and of secularisation as a process that secures and even furthers that division, creating more space for non-religious activity and behaviour.[51] The contradictions in this argument have been exposed in broader scholarly debate but also, and most forcefully, by Indian feminists' responses to discussions about women's rights and a uniform civil code, in the wake of the Shah Bano ruling.[52]

48 T. Mitchell, *Rule of experts: Egypt, techno-politics, modernity* (Berkeley, Calif., London, 2002), especially pp. 4–7; J. A. Tooze, 'Imagining national economies', in G. Cubitt (ed.), *Imagining nations* (Manchester, 1998), pp. 212–228; D. Linehan, 'Regional survey and the economic geographies of Britain', *Transactions of the Institute of British Geographers*, 28, 1 (March, 2003), pp. 96–122; J.-P. Beaud and J.-G. Prévost, 'Statistics as the science of government', *The Journal of Imperial and Commonwealth History*, 33, 3 (2005), pp. 329–391.

49 For just a small selection of the influential works published on this topic at this time see S. Kuznets, *National income, 1929–1932* (National Bureau of Economic Research Bulletin No. 49 (New York, 1934); A. L. Bowley and Sir J. Stamp, *The National income 1924* (Oxford, 1927); G. F. Shirras, 'India's national income', *Review of the International Statistical Institute*, 4, 4 (1937), pp. 467–483; S. S. Kuznets, *National income* (New York, 1946).

50 P. Chatterjee, 'Secularism and toleration', *EPW*, 29, 28 (9 July 1994), 1768–1777; N. Menon, 'Women and citizenship', in P. Chatterjee (ed.), *Wages of freedom: fifty years of the Indian nation-state* (Delhi, 1998), pp. 265–266; Birla, *Stages of capital*; Sturman, *The government of social life*.

51 See, for example, D. E. Smith, *India as a secular state* (Princeton, 1963); T. N. Madan, 'Secularism in its place', *Journal of Asian Studies*, 46, 4 (1987), pp. 747–759; A. Sen, 'Secularism and its discontents', in K. Basu and S. Subrahmanyam (eds.), *Unravelling the nation: sectarian conflict in India* (New Delhi, 1996), pp. 11–43.

52 Menon, 'Women and citizenship'; R. S. Rajan, *The scandal of the state* (Durham and London, 2003), Chapter 5. The work of Talal Asad has been central to understandings of secularism as a tool of liberal governance, especially his *Formations of the secular:*

The 1985 judgment in the case of *Mohammad Ahmed Khan* v. *Shah Bano Begum* set out the question of a uniform civil code (UCC) in particular political terms which presented the continued operation of Muslim laws relating to women as running in direct conflict with India's proper functioning as a unified, secular democracy.[53] But the question of a UCC has had a long and complex relationship with debates about Indian women's legal rights, dating back to the 1930s and the processes of political transformation with which this book is concerned. The demand for a common civil legal system to govern all Indians, regardless of their religious identity, began to be made by prominent Indian women leaders around the early 1940s.[54] The incorporation of this demand into the post-independence constitution of India has been attributed in large part to Rajkumari Amrit Kaur and Hansa Mehta, the two women members of the sub-committee that drafted the constitution's Fundamental Rights.[55] Promising that 'the State shall endeavour to secure for citizens a uniform civil code throughout the territory of India', article 44 was, after much discussion, passed as a non-justiciable, directive principle rather than a right enforceable by the courts, as a gesture of the state's sensitivity to religious sentiment in the wake of the partition riots.[56] Feminist scholars have noted that, even among those who supported it, the aims and purpose of the UCC were interpreted in a variety of ways during the Constituent Assembly debates. Arguments that such a code was needed to improve women's rights and secure gender equality were interspersed with, and even linked to, arguments about national integration and the political benefits of social uniformity, by both men and women representatives.[57]

The appropriation of the demand for a UCC by right-wing Hindu nationalists following the Shah Bano judgment produced widespread

Christianity, Islam, modernity (Stanford, 2003). For an overview of the academic debates about secularism and liberal governance see N. Chatterjee, *The making of Indian secularism: empire, law and Christianity, 1830–1960* (Basingstoke, 2011), pp. 2–5.

[53] A. A. Engineer (ed.), *The Shah Bano controversy* (Bombay, 1987); Z. Hasan, 'Minority identity, Muslim Women Bill campaign and the political process', *EPW*, 24, 1 (7 January 1989), pp. 44–50; Z. Pathak and R. S. Rajan, 'Shahbano', *Signs*, 14, 3 (Spring, 1989), pp. 558–583; M. Kishwar, 'Pro-women or anti-Muslim?', in M. Kishwar (ed.), *Religion at the service of nationalism* (New Delhi, 1998), pp. 206–224.

[54] See Rameshwari Nehru's presidential address to the All-India Women's Conference, December 1940, in *Gandhi is my star* (Patna, c. 1950), p. 24.

[55] G. Austin, *The Indian Constitution* (New Delhi, 1966), pp. 80–81.

[56] Austin, 'Religion, personal law and identity in India', in G. J. Larson (ed.), *Religion and personal law in secular India* (Bloomington, Ind., 2001), pp. 17–18.

[57] Parashar, *Women and family law reform in India* (Delhi, 1992); Kishwar, 'Codified Hindu law'; Nivedita Menon, 'Women and citizenship'; Sunder Rajan, *The scandal of the state* (Durham and London, 2003), Chapter 5.

opposition among Indian women's groups. Indian feminists came together to decry Hindu right-wing claims that Hindu law had been modernised by the passage of the Hindu Code Bill legislation in a manner that made it a suitable model for a 'progressive' and women-friendly UCC.[58] There was far less consensus, however, about how Indian women should now position themselves in relation to the UCC demand and the programme of women's uplift more generally.[59] Attempts to grapple with these questions gave rise to a range of arguments and positions which sought, in different ways, to negotiate between and overcome the polarities of 'state' and 'community' power that structure both the Indian legal system and the dual conception of rights set out in the Indian Constitution – as protection of the individual against discrimination on grounds of religion, race, caste, sex or place of birth on the one hand, and, on the other, as freedom of religion, in terms of profession, practice and propagation.[60] At the same time, in questioning the ability of *both* community structures *and* the state-based model of individual rights to secure women's interests as women, feminist debates about the UCC have helped to open up the field of Indian democratic politics and to expose the ways by which state and community are mutually constituted even as they are held to be intrinsically opposed.[61]

Tracing the history of the Code Bill and its resolution, this book hopes to show more clearly how the project of liberal state building constituted the relationship between state and community power relations in contemporary India. In light of the UCC debate, Nivedita Menon has argued that 'secularism' in India is best understood as the mediation of three key aspects that underpin the anti-colonial project of governance as developed by Indian elites: '(a) bourgeois democracy, which here was about the interrelations amongst communities, individual citizens and

[58] M. Kishwar, 'Codified Hindu law: myth and reality', *EPW*, 29 (13 August, 1994); Som, 'Jawaharlal Nehru and the Hindu Code Bill'; Parashar, *Women and family law reform in India*; F. Agnes, 'Hindu men, monogamy and uniform civil code', *EPW*, 30, 50 (16 December 1995), pp. 3238–3244; K. Sangari, 'Gender lines: personal laws, uniform laws, conversion', *Social Scientist*, 27, 5/6 (May–June, 1999), pp. 17–61; Rajan, *The scandal of the state*.

[59] V. Dhagamwar, *Towards the uniform civil code* (Bombay, 1989); Menon, 'Women and citizenship', especially pp. 254–260; Rajan, *The scandal of the state*, especially pp. 156–162.

[60] Articles 15 and 25, Constitution of India, Part III, Fundamental Rights.

[61] Menon, 'Women and citizenship'; S. Sen, 'Towards a feminist politics?', in K. Kapadia (ed.), *The violence of development: the politics of identity, gender and social inequalities in India* (Delhi, 2002), pp. 459–524; Rajan, *The scandal of the state*. Anupama Rao's study of the ways by which Mahar Dalits in western India used their 'marginal' status to challenge and open up the colonial–nationalist consensus relating to the division between political and religious power offers another historical example of the creative potential of this kind of questioning. Rao, *The caste question*.

the state at different levels; (b) social justice, to the extent that equality in a formal legal sense, for example through the abolition of Untouchability, was necessary for this project; (c) capitalist transformation of the economy, through the creation of the mobile and unmarked citizen.'[62] This book shows how the Hindu Code Bill project provided a clear legal framework through which the postcolonial state could manage and coordinate all three of these elements of governance. It argues that this framework does not reflect a peculiarly Indian brand of secular liberalism but the nature of twentieth-century liberal government itself. In so doing it shows that women's status as democratic citizens, in India as in all liberal states, depends not only on the development of a language with which to claim rights but also on the ways in which the particular historical structures of political economy and state governance shape citizenship and subjectivity.

Gender, rights and history writing

This discussion of scholarly debates about liberalism and 'modernisation' in colonial India helps to highlight the limitations of seeing the Hindu Code Bill as a 'women's bill'. Perhaps the first thing to note about this view of the Code Bill is that, as the opening section of this introduction suggested, it arises from an argument about the Bill's ultimate failure to secure women's interests. Earlier scholars have seen the passage of the Hindu Code Bill, and twentieth-century law reform in India more generally, as reflecting the triumph of a desire to 'modernise' and consolidate Hindu legal structures over calls to 'liberate' Hindu women by giving them greater legal rights.[63] This argument itself stems from the notion that colonialism bequeathed to India a conflicted and deformed 'modernity' in which political freedom for the nation was set at odds with calls for social equality and freedom for individual subjects. This tension is at the heart of many studies of the Indian women's movement, which sees Indian women leaders struggling to navigate between supporting the male-dominated nationalist movement's claims for independence on the one hand and the goal of gender equality on the other.[64] Underpinning such a narrative is an assumption that 'Indian women' exist as a clearly defined group which, through the outcome of

[62] Menon, 'Women and citizenship', p. 266 and her 'Citizenship and the passive revolution', *EPW*, 39, 18 (1–7 May 2004), pp. 1812–1819.

[63] See footnote 2.

[64] G. Forbes, 'The politics of respectability', in D. A. Low (ed.), *The Indian National Congress* (Oxford, 1988), pp. 54–67; M. Kishwar, 'Gandhi on Women', *EPW*, 20, 40 and 41 (1985), pp. 1691–1701, 1753–1758; Kumar, *The history of doing*, Chapters 4

legislative projects such as the Hindu Code Bill, has been pinned down or held back by other 'interest groups' or power relations. This is the same understanding of women's oppression that structured discussions about the UCC debate in which 'Indian women' were seen to be caught between state and community structures.

Highlighting the political economy of devolution, this book argues that Indian women's political rights were deeply influenced by their status as property-holding economic subjects, a status which was situated in religious-based personal law. As a result of the law reforms of the early twentieth century, these property rights rested on the basis of women's relationships with individual male relations (as wives and daughters, though not as members of a joint family) in the case of Hindus, and with the religious community in the case of Muslims. Hindu and Muslim women were granted legal subjecthood on this basis. The struggle between the political rights of women qua women and the patriarchal structures of personal law was therefore a product of political devolution and democracy in India rather than the main driving force behind its emergence.

Simultaneously, historians must be aware that the emergence in the official state archive of 'Indian woman' as a clearly defined historical subject – as an individual voter and property holder – reflects changes in the political economy of the interwar Indian state and the reconfiguration of property rights within the Indian family, not simply the transformation of individual consciousness. Certainly many Indian women's lives changed significantly in this period, as they became more actively involved in Indian politics and the public campaigns against colonial rule. This period also witnessed important transformations in the way in which women and men viewed and experienced their sense of 'selfhood'.[65] But we must think carefully about how these changes relate to each other.

The very narrative of women's growing consciousness as political individuals rests on the supposedly universal liberal framework of social modernisation, which sees individualism as the emancipatory goal towards which all societies should move. The flipside of this attempt to

and 5; W. Singer, *A constituency suitable for ladies and other social histories of Indian elections* (New Delhi, 2007). Though she looks at a slightly earlier period and draws attention to an array of often ignored women actors, Padma Anagol's work retains key aspects of this broader understanding of the context structuring women's agency in colonial India – *The emergence of feminism in India, 1850–1920* (Aldershot, 2005).

[65] F. Orsini, 'Domesticity and beyond: Hindi women's journals in the early twentieth century', *South Asia Research*, 19, 2 (1999), pp. 137–160; F. Orsini, 'Love letters', in F. Orsini (ed.), *Love in South Asia: a cultural history* (Cambridge, 2006), pp. 228–258; Sreenivas, *Wives, widows and concubines*, Chapter 4.

'equalise' the development of all societies is that those societies which do not display such individualism are deemed to be un-modern or to have failed to secure progress. It is not surprising, therefore, that analysis of the Hindu Code Bill and the changes of the interwar years from a perspective that assumes that individual 'consciousness' is the driver of political change has led scholars to the conclusion that India's political modernity is a corrupt or deficient one.

This book proceeds on the basis that the goal of liberalism – that is, a society in which all people feel content, protected and able to attain social justice – is worth striving for and that academic disciplines can illuminate our understanding of past processes in ways that will help us to secure this end. But it also seeks to show how the structures of liberal governance have historically operated in ways that simultaneously undermine or impede the attainment of social equality on which their power is premised. The processes of abstraction and equalisation through which liberal rights are generated rest on simultaneous processes of exclusion, but they are also integral to the dynamism of the liberal rights framework. The abstract nature of the liberal citizen creates the potential for those who are not 'citizens' to seek entry to this category on the grounds of social equality, though their success will always rest on arguments about social difference that could qualify or exclude the citizenship claims of others.[66] To approach the history of the Hindu Code Bill from the assumption that it reflects an attempt by politically conscious Indian women to secure freedom from the state is to limit our ability to understand how gender, and other forms of, marginalisation are structured and sustained.

This book, then, is an appeal to readers as liberal subjects to bear in mind this two-fold process when making 'rights claims'. But it is also an appeal to readers as scholars to uncover more about the *historical* conditions within which such 'rights claims' have successfully altered existing power relations, paying particular attention to the material, economic aspects of the liberal project. This can never lead us to a universal theory of rights, an endeavour which would again mark an adoption of the logic that we are trying to analyse, but it will help us to better theorise the ways in which a universalising framework of governance has come to structure both the conditions that shape our own 'being in the world' and our understanding of other humans across time and space.

[66] For a historical example of the way in which law was used to challenge the status quo in colonial South Asia see S. Chandra, *Enslaved daughters: colonialism, law and women's rights* (Delhi, 1998). This point is also taken up in more detail in the conclusion to this book.

Outline of the book

The first three chapters of the book examine the origins of the Code Bill project, tracing these back to the changes in the political and economic structure of colonial rule in India that followed the First World War. The last three chapters focus on the drafting and eventual passage of the Code Bill legislation, examining its development over time and its place within the rapidly changing structures of the Indian state.

Chapter 1 looks at how colonial understandings of the legal development of, and the difference between, Hindu and Muslim law influenced the trajectory of debates about personal law reform in the first decades of the twentieth century. It shows how colonial interpretations of personal laws that stressed the similarity of English law to Muslim law, and its profound difference from Hindu law, shaped discussions and calls for reform in which Muslim representatives stressed the distinct and religious character of Muslim personal law, while Hindu representatives emphasised the common sociological roots of Hindu and English law. Chapter 2 explores how the introduction of graded taxation to pay for devolution drew not only the colonial administration but the expanding structures of state power into a particular relationship with Hindu taxpayers that was not replicated with any other religious community. Premised on a desire to extract higher levels of tax from wealthy Hindus, this arrangement in fact provided the latter with an important platform from which to make their own demands on state policy. Chapter 3 looks at the ways in which the global economic depression of the 1930s affected the framework of taxation and representation that had evolved in the previous decade. It examines the ways in which the colonial administration's stringent monetary policy served, unexpectedly, to draw questions of family property and wealth into the discussions about public revenue. Looking at the interplay between taxation policy, personal law reform and franchise rights in this context, it shows how these developments created new possibilities for thinking about Indian women, Hindu and Muslim, as economic subjects in their own right rather than as financial dependants.

Beginning with the outbreak of the Second World War and running through into the late 1940s, Chapter 4 is concerned with the development of the Code Bill itself, looking particularly at the impact of the transfer of power on its development. It shows how the specific terms of the codification project, which focused on questions of Hindu women's rights, were the product of a very particular historical moment: a series of law reforms in the late 1930s that seemed to suggest that Muslim personal law offered greater freedoms and protections to women than did

Hindu law. Independence did not remove the various pressures that had given rise to the call for a Code Bill before 1947, including this communal competition. It did, however, alter the terms on which the latter was premised by heightening legislative support for an imagining of Hindu identity that privileged displays of masculine authority defined in relation to the social norms of northern and north-western India which had been particularly badly hit in the partition violence. These regionalised, masculine norms thus came to define the kind of Hinduism set out in the codification project. The consolidation of a single model of Hindu family relations is the focus of Chapter 5 also, which looks at the pivotal role played by the first Law Member of independent India, B. R. Ambedkar, in shaping the outcome of the codification project, particularly in terms of marriage reform. Exploring the relationship between caste, custom, democracy and law in Ambedkar's thought, it shows how his attempt to use state power to eradicate caste practices through the Code Bill served to further entrench the relationship between state power and Hindu law, now defined in more rational terms. The final chapter looks at how the Hindu Succession Act of 1955, the section of the Code Bill project dealing with property rights, came to consolidate a model of Hindu family as a rational economic unit that was compatible with the needs and structures of economic and political governance as they had come to be defined after independence, helping to consolidate and secure the operation of not only state revenue collection but also aspects of the state's economic plans, including land reform and the abolition of the zamindari tenurial system.

Finally, turning to the legacy of these developments for the operation of women's property rights in India today, the conclusion of the book returns to some of the broader questions raised here about how we might think about democracy and liberal rights claims as both scholars and liberal subjects.

1 Making the modern Indian family: property rights and the individual in colonial law

In 1919, Hari Singh Gour, a lawyer from the Central Provinces, published his fourth major legal work, a detailed history of the Hindu legal system entitled *The Hindu Code*. Born into a relatively poor family, Gour had been a talented student, winning a series of scholarships that led him to Cambridge where he studied law and mathematics. Perhaps influenced by this combination of subjects, Gour saw law, and social relations, in highly rational terms. Tracing the development of Hindu law from ancient times to the present, Gour's narrative followed what by the early twentieth century had become a fairly standardised colonial view of Hindu society as a social order that had fallen into stagnation and decline. Gour fully accepted that Indian and European societies had evolved from the same Aryan roots, but believed that Indian society lacked the dynamism and intellectual capacity of the latter that had allowed Europeans to advance from primitive beliefs to a more sophisticated understanding of the world. For Gour, legal development and a rejection of religion lay at the heart of this social progress.

> While both the Hellenic as well as the Roman Laws, in their inception furnish many interesting and close analogies to Hindu Law, their early secularization and rapid development makes the relationship look like that of a child to a grown-up man . . . The one outstanding difference between the two branches of the Aryan family, migrated in opposite directions, is in their mental outlook on life. The one migrating to the East were meekly submissive to the usages which they continued to regard as records of divine wisdom, while the others threw the divine influence into the background and secularized their laws, which they modified with the growing earnestness of the age [sic].[1]

For Gour, then, law was not static but a structure tied to contemporary social practices, shifting as these evolved. Lagging behind its European counterpart, Hindu society had changed very little for many centuries, but, warned Gour, this was no longer the case. Hindu society was

[1] H. S. Gour, *The Hindu Code, being a codified statement of Hindu law with a commentary thereon and relevant Acts annotated* (Nagpur, 1919), p. 6.

now changing fast, and it was vital that the colonial administration recognise and support its development.

Gour believed it was important that all areas of the Indian legal system be clear and reflect the contemporary needs of those it governed. He saw codification as the process best suited to achieving this end, a view that was consonant with that of many nineteenth-century British jurists but which, as Elizabeth Kolsky has pointed out, had taken on particular salience and political significance in India with the passage of the Indian Penal Code in 1862.[2] Indeed, Gour had devoted much attention to the Indian Penal Code. Publishing a two-volume study of this Code in 1909, he had argued that the Penal Code was 'by far the most important piece of . . . Indian legislation', though, he was quick to add, only 'indiscriminating critics' could celebrate it as 'a model piece of legislation'. The main body of the study, therefore, set out Gour's own 'emendation . . . and improvement' of this vital legal measure.[3]

Gour's later *Hindu Code* followed a similar format, setting out the Hindu legal system as he thought it should operate. Gour rejected the argument that reform of Hindu law would undermine the colonial administration's pledge to respect the religious practices of its subjects. While British officials might insist that they ruled through a policy of religious neutrality, statute, court rulings and the compilation of legal glosses had all made an impact on the Hindu legal systems so that 'there is scarcely any principle of the orthodox law that has not been eaten into either completely or partially by the Legislature or by the [Orientalist scholars'] Codes'.[4] Reflecting on the twin processes of secularisation and legal modernisation, Gour argued that such developments should be welcomed, not lamented. However, he was critical of the fact that Hindus themselves were not driving these changes. '[T]here can be no doubt', Gour explained,

> that the present state of Hindu Law constitutes an anomaly, unparalleled in the history of the world. The Hindu Law as expounded by the text writers and commentators has been declared to be the law of the Hindus. Though the Legislature possess the authority to interfere, it is pledged to leave it alone.

[2] E. Kolsky, *Colonial justice in British India: white violence and the rule of law* (Cambridge, 2010), Chapter 2; see also D. Skuy, 'Macaulay and the Indian Penal Code of 1862: the myth of the inherent superiority and modernity of the English legal system compared to India's legal system in the nineteenth century', *Modern Asian Studies*, 32, 3 (July 1998), pp. 512–557.

[3] Gour, *The penal law of India, being an analytical, critical and expository commentary on the Indian Penal Code, Act XLV of 1860*, Vol. I (Allahabad, 1982, 10th edition, first published 1909), p. 15.

[4] Gour, *Hindu Code*, p. 42.

The old race of commentators who, by interpretation, annotation and analogy, brought that law into line with the altered social conditions is extinct and their occupation gone. Their place is now assumed by the judges of the British Courts who are all subordinate to the Privy Council in London. It is manifestly out of touch with the current Hindu opinion.[5]

As a Hindu with legal training, Gour felt confident that he could reform Hindu law in a way that reflected 'current Hindu opinion'. Indeed, *The Hindu Code* set out a clear-cut and uniform code that defined Hindus' rights and responsibilities in relation to the day-to-day pressures of contemporary life. Gour did not wish to protect Hindu law from legislative power and state interference but wanted to open it up, so long as the legislature comprised people who fully understood the Hindu legal system. It is significant, therefore, that Gour published his book in the same year as a new, broader franchise was introduced. Indeed, he was quick to take advantage of the opportunities provided by the 1919 Government of India Act. In 1921 he was elected to the Central Legislative Assembly and he began to lobby for personal law reform as soon as he had taken his seat.[6]

Gour was one among many advocates of personal law reform in early twentieth-century India. What was notable about his arguments, however, was his view that Hindu law reform should be driven primarily through legislative intervention. Such an argument required Gour, and the Hindu legislators and lawyers who agreed with his position, to articulate a particular relationship between political power and the structures of the Hindu legal system, a relationship that was deeply informed by colonial arguments about the link between property rights and legal modernity. As a result, his *Hindu Code* set out many of the key ideas and themes that would inform legislative and judicial discussions of Hindu law over the next four decades.

Calls for reform of personal law were not confined to Hindu representatives. The early twentieth century also saw Muslim legislators demand changes to their personal legal system. Hitherto, academics have considered the calls to reform Hindu and Muslim law in isolation from one another. The two legal systems were certainly considered to be quite distinct, with Muslim legislators usually abstaining from debates about

[5] Ibid, p. 46.
[6] In February 1921 he introduced a Bill to amend the 'secular', non-religious 1872 Special Marriage Act to allow Hindus to marry under its provisions. 'A bill further to amend Act III of 1872', 5 February 1921, NAI, Home Department, Judicial A Proceedings, May 1921, Nos. 228–235. On the history and secular status of the Special Marriage Act see P. Mody, 'Love and the law: love-marriage in Delhi', *Modern Asian Studies*, 36, 1 (2002), pp. 228–235.

Hindu law reform, and vice versa.[7] Yet contemporary thinking about social evolution and the universalising drive of colonial rule meant that these legal systems were also understood in relation to one another and to other forms of law, most notably English and commercial law. As a result, the two systems of personal law were arranged hierarchically, or at different points along a single trajectory of global legal development, which hailed the emergence of the rights-holding individual as the zenith of legal modernity. Tracing the development of this hierarchy, this chapter looks at how colonial constructions of Hindu and Muslim personal law informed the Hindu and Muslim reform debates, with important implications for the 'modern' and 'religious' character of these legal systems.

Making colonial hierarchies: property rights and social progress in colonial personal law

Twentieth-century debates about the relationships between English, Hindu and Muslim law were deeply informed by the way in which the colonial legal system had emerged during the cause of British rule. Warren Hastings' Judicial Plan of 1772 established that British law was to form the basis of the laws applied in the territories under East India Company rule but that in 'civil' and religious matters (the regulation of inheritance, marriage, caste) Indians would be governed according to the laws of the Qur'an in the case of Muslims and the Shaster in the case of Gentoos (Hindus).[8] This divided legal system was to be administered through a hierarchical court structure that maintained some of the Mughal legal institutions.[9] Many scholars have emphasised that British understandings of jurisprudence and the very structures of authority through which the company courts applied the law served to transform and often eradicate Hindu and Muslim law

[7] In its 1925 report, the Reforms Enquiry (Muddiman) Committee had proposed setting up two permanent standing committees for the consideration of such private members' Bills, one to deal with Muslim law, the other with Hindu law. NAI, Home Department, Public, F.290(6)/1925. The Home Member, James Crerar, presented this suggestion to the Council of States on 16 September 1925. It won praise from legislators but government officials were less supportive and the matter was never properly taken up. NAI, Home Department, Public, F.2/2/1930.

[8] Succession was added to the list of subjects to be governed by religious law in 1781, under Bengal Judicial Regulation VI, 1781, s. 37. Morley, *The administration of justice in British India*, p. 178.

[9] B. B. Misra, *The central administration of the East India Company, 1773–1834* (Manchester, 1959), pp. 229–232; Derrett, *Religion, law and the state in India*, pp. 231–237; A. C. Banerjee, *English law in India* (New Delhi, 1984), pp. 1–25; P. J. Marshall, *Bengal: the British bridgehead* (Cambridge, 1987), pp. 128–130.

as it had operated before British rule.[10] These writers have also highlighted the ways in which colonial administrators altered the existing Indian legal systems by referring, both consciously and unconsciously, to principles of 'Justice, Equity and Good Conscience', interpreted in practice to mean English law, in order to fill what they identified as 'gaps' in indigenous law.[11] However, colonial officials' more general approach to legal administration in India also prompted them to identify important differences in the origins and character of Hindu and Muslim legal authority.[12]

Early colonial jurists were already familiar with Islamic scriptures and texts, which were taken to form the basis of the Muhammadan law applied by the Company courts. Yet, as Scott Kugle has argued, Company administrators interpreted and applied these texts in ways that were quite unlike their Mughal predecessors. Influenced by the economic and administrative imperatives of colonial rule, British jurists and officials viewed the dicta of Islamic texts as constituting a legal system independent of the society it governed, thereby constructing a new body of 'Anglo–Muhammadan' law more 'centralised' and 'formally rationalised' than English law of the time.[13]

The structure of Islamic law, what Kugle calls 'the patina of systemization' of the Islamic sources, led Company officials to believe that they were looking for a pre-existing code of Muslim law.[14] Under Hastings' order, the *Hedaya*, a twelfth-century compilation of Hanafi legal opinions, was translated from Arabic into Persian by a group of Indian maulvis and then from Persian into English by Charles Hamilton and published in four volumes in 1791.[15] While the *Hedaya* had been influential among Hanafi Indian Muslims in the final years of Mughal rule, it was certainly not the only legal textual source in use in the subcontinent at this time.[16] Other Islamic texts, which were known of and available in this period, though not in English translation, were largely ignored

[10] Derrett, *Religion, law and the state in India*, pp. 225–320; Galanter, 'The displacement of traditional law in modern India', pp. 15–36; Cohn, *Colonialism and its forms of knowledge: the British in India*, pp. 57–75; Kugle, 'Framed, blamed and renamed', pp. 257–313; for an overview of the historiography on this point see C. Mallampalli, 'Escaping the grip of personal law in colonial India: proving custom, negotiating Hindu-ness', *Law and History Review*, 28, 4 (November 2010), pp. 1046–1050.

[11] Derrett, *Religion, law and the state in India*, pp. 311–313; Galanter, 'The displacement of traditional law in modern India', pp. 18–19; Kugle, 'Framed, blamed and renamed', pp. 286–289.

[12] Nair notes similar kinds of tendencies to the ones discussed below in her outline of the colonial legal system and its development, *Women and law in colonial India*, pp. 22–28.

[13] Kugle, 'Framed, blamed and renamed', p. 257, pp. 274–275.

[14] Ibid, pp. 271–272.

[15] M. R. Anderson, 'Islamic law and the colonial encounter in British India', pp. 174–175.

[16] Ibid, pp. 170–171.

by the colonial judiciary.[17] Furthermore, though colonial jurists read the *Hedaya* as an authoritative set of rulings, such compilations of decisions had been read quite differently in Mughal times, when they were used to offer guidance to Muslim judges in their application of legal arguments to the particular case at hand.[18]

A second foundational text in the evolving Anglo–Muslim legal system was the *Sirajiya*, translated by William Jones from a Persian translation by Indian maulvis and published in 1792.[19] Another Hanafi text, also from the twelfth century, the translation of the *Sirajiya* was commissioned because it dealt with inheritance practices, a subject not covered in the *Hedaya*. Demonstrating the manner in which administrative needs shaped the body of Anglo–Muhammadan law emerging at this time, colonial jurists' complaints about the difficulties of using Jones's work led to its replacement in 1832 by Neill Baillie's *The Moohummudan law of inheritance*, a treatise which he compiled in English rather than a direct translation of a single Islamic text.[20] By the early nineteenth century, such treatises and commentaries had become the text of choice for the colonial courts. William Hay Macnaghten's *Principles of Muhammadan Law*, published in 1825, was among the first of these works and remained a highly influential source of Muslim law under British rule.[21] Including previous cases and rulings by the colonial courts as a source of precedent for future administration of colonial Muslim law, Macnaghten's book marked another clear departure from pre-British Muslim legal practices which had not recognised 'case law' in this way.[22]

Ignoring, or unaware of, these important shifts in juridical practice, scholars such as Macnaghten believed that they were recording the 'authentic' and established body of Muslim law and in so doing drew their readers' attention to what they saw as the deficiencies, but also the

[17] Ibid, p. 273, see also Morley, *The administration of justice in British India*, pp. 257–294, whom Kugle cites in relation to this point. Anderson suggests that English translations of Islamic texts were planned but never carried out due to lack of funds, Anderson, 'Islamic law and the colonial encounter in British India', p. 175.

[18] Kugle, 'Framed, blamed and renamed', pp. 295–296; see his description of the difference between 'Anglo–Muslim' law and 'Muslim' law or *fiqh*, ibid, p. 258, ff 3.

[19] Kugle, 'Framed, blamed and renamed', pp. 272–273; Anderson, 'Islamic law and the colonial encounter in British India', pp. 174–175.

[20] N. B. E. Baillie, *The Moohummudan law of inheritance: according to Aboo Huneefa and his followers, with an appendix, containing authorities from the original Arabic* (Calcutta, 1832).

[21] W. H. Macnaghten, *Principles and precedents of Moohummudan law, being a compilation of primary rules relative to the doctrine of inheritance (including the tenets of the Schia sectaries), contracts and miscellaneous subjects; and a selection of legal opinions involving these points, delivered in the several Courts of Judicature subordinate to the Presidency of Fort William, together with notes illustrative and explanatory and preliminary remarks* (Calcutta, 1825).

[22] Kugle, 'Framed, blamed and renamed', p. 274.

admirable qualities, of the legal practices they had 'discovered'. Qur'anic rules of succession set out that, on his death, a man's property was divided between his nearest heirs, including his wife and daughters, providing clear rules for the way in which his estate was to be divided among them that won praise from many British jurists.[23] William Jones explained that he was 'strongly disposed to believe that no possible question could occur on the Muhammadan law of succession which might not be rapidly and correctly answered'.[24] Macnaghten drew his readers' attention to what he saw as the highly equitable nature of Muslim property law as compared with its English counterpart, noting that 'the apparently unjust preference of the elder son, to the exclusion of all the rest, which in our own Law had its origin in the feudal policy of the times, is rejected by the Moohammudan Law, and the equitable principles of equality obtain in its stead'.[25] Such a system of property rights was grounded in Islamic marriage law, which defined marriage as 'a contract founded on the intention of legalizing generation . . . [and] . . . the mutual enjoyment of the parties'.[26] As Macnaghten stressed, the contractual basis of marriage acknowledged women as legal persons in their own right – the consent of both parties was essential to legalise a marriage in which 'there should be no legal incapacity on the part of the woman'.[27] Marriage itself did not alter a woman's status in any way. She retained full powers to dispose of her own property by gift, sale or lease, without the consent of her husband, and she could also be convicted of theft of her husband's property. Such recognition of women as legal persons stood in marked contrast to the status of women under early nineteenth-century English law, by which marriage was held to be a sacrament and on marriage a woman surrendered her property and legal identity to her husband.[28]

This view of the Muslim family as a collection of individuals also stood in stark contrast to colonial views of the Hindu family as a joint unit. Establishing the Shaster (*Shastras*) as a Hindu 'equivalent' of the Qur'an, Hastings' Plan was premised on the notion that Hindus adhered to a codified set of practices similar to those that colonial officers

[23] Macnaghten, *Principles and precedents of Moohummudan law*, pp. iii–v, 1–23.

[24] W. Jones, *Works*, VIII, 204 cited in F. B. Tyabji, *Principles of Muhammadan law; an essay at a complete statement of the personal law applicable to Muslims in British India* (Calcutta, 1913), p. 818.

[25] Macnaghten, *Principles and precedents of Moohummudan law*, p. viii.

[26] Ibid, pp. 56–77. [27] Ibid, p. 56.

[28] This continued to be a feature of English law until well into the nineteenth century. In her autobiography Millicent Garrett Fawcett points to the experience of hearing the courts describe property stolen from her as belonging to her husband as a critical moment in her decision to become a suffragist. *What I remember* (London, 1924), pp. 61–63; Holcombe, *Wives and property*, pp. 18–33.

presumed to underpin Muhammadan law. The British viewed the smriti texts as the 'foundation of Hindu law'. Attributed to various ancient sages, these were understood as single-authored 'textbooks' from which the body of Hindu law developed. In addition to these texts, the British used the *Vyakhyana* texts, which they understood as 'Glosses and Commentaries upon these smritis, many of which partake of the nature of Digests' as well as the *Nibandhana Grantha*, 'or Digests properly so called'.[29]

These works provided a somewhat different basis for the production of colonial Hindu legal texts, compared with those relating to Muslim law. While colonial readings of Muslim law rested on a body of knowledge produced by colonial jurists, there was a belief that this law reflected the rules of a clearly defined Islamic text, such as the *Hedaya*. With Hindu law, however, British rulers found a 'legal system' that already operated through what they understood as a process of legal glossing and commentary. The colonial government commissioned its own such glosses and digests while still claiming to uphold the principles of Hindu law. The early decades of British rule thus saw the production of a series of Hindu legal digests, by both Indian and British authors, commissioned by Company officials.[30] As with Muslim law, the British texts quickly came to form the basis of the laws as they were applied by the colonial courts.

The first of these Anglo–Hindu texts was a translation of the *Vivadarnava Setu*, commissioned by Warren Hastings and produced through a process as complex as that followed by Hamilton several years later in his preparation of the *Hedaya*; Hastings appointed eleven pandits to produce a compilation of shastric texts and decisions in Sanskrit which was then translated into Persian, and then into English by Nathaniel Brassey Halhed.[31] Halhed's text was published in 1776 as *A Code of Gentoo Laws, or, Ordinations of the Pundits* and formed the textual basis of Anglo–Hindu law until 1793 when it was replaced by the more comprehensive *Digest of Hindu Law*, translated by British Sanskrit scholars, William Jones and Henry Colebrooke, from texts compiled in conjunction with Hindu pandits.[32] The expansion of state facilities for shastric education in this period had produced much

[29] Morley, *The administration of justice in British India*, p. 203.

[30] Legal works by Indian authors included 'Vyavastharatnamala' by Sri Lakshmi Narayana Nyayalankara (that followed 'the European plan of a Catechism, written in the form of questions and answers, in the vernacular language of Bengal, with quotations in Sanskrit from books of established authority, adduced in support of the principles advanced') and two works by Sri Lakshmi Narayana, one on the law of inheritance according to the doctrines of Jimuta Vahana contrasted with those of the Mitakshara, and a short treatise on adoption. Ibid, p. 234.

[31] Derrett, *Religion, law and the state in India*, pp. 239–240.

[32] Ibid, pp. 242–250.

greater awareness within the colonial administration of the different shastric traditions and texts, which by the turn of the nineteenth century were understood to equate to different 'schools' of Hindu law that were applicable on a broadly regional basis.[33]

The publication of Colebrooke's *Two treatises on the Hindu law of inheritance*, in 1810, did much to standardise the structure of the evolving body of Anglo–Hindu law.[34] Colebrooke distinguished between a 'Bengal' and a 'Banaras' school of law, the main feature dividing the two being the rules governing inheritance and property rights, an aspect of law which colonial revenue officers were particularly interested to clarify.[35] These schools of law rested on two different commentaries on the same body of smriti literature, with Jimutavahana's commentary, known as *Dayabhaga*, forming the basis of the 'Bengal' school and Vijnanesvara's *Mitakshara* serving as the base for the 'Banaras' school.[36] Applied to all Hindus outside Bengal, the 'Banaras' school later became known as the 'Mitakshara' school, which was understood to be divided into four, again regional, schools – Benaras, Mithilia (applied in Bihar), Maharashatra and Dravidian (applied in southern India).[37] Under both Mitakshara and Dayabhaga law, the default position of the Hindu family was understood to be that of a joint, or undivided, property-owning collective. What separated the two schools, and also influenced the structure of the subschools of Mitakshara law, was the way in which this jointness was understood to operate.[38]

A man governed by Dayabhaga law held absolute rights over his property. Family members could enjoy access to the family's ancestral property but were given a share in this estate only on the death of the patriarch, when property was devolved according to an order of succession that included both male and (some) female heirs.[39] Colonial jurists

[33] Ibid, pp. 237–246; Cohn, *Colonialism and its forms of knowledge*, pp. 72–74; Rocher, 'The creation of Anglo–Hindu law', pp. 83–84.

[34] H. T. Colebrooke, *Two treatises on the Hindu law of inheritance* (Calcutta, 1810); Derrett, *Religion, law and the state in India*, p. 252; L. Rocher, *Jimutavahana's Dayabhaga: the Hindu law of inheritance in Bengal* (Oxford, 2002), pp. 20–21.

[35] Derrett, *Religion, law and the state in India*, pp. 247–248.

[36] Rocher, 'The creation of Anglo–Hindu law', pp. 83–84; Rocher, *Jimutavahana's Dayabhaga*, pp. 25–32.

[37] Morley, *The administration of justice in British India*, pp. 200–203.

[38] Rocher, *Jimutavahana's Dayabhaga*, pp. 25–28.

[39] Colebrooke, *Two treatises on the Hindu law of inheritance*, pp. 184–194. Not all female relatives, or even daughters, could inherit the estate as succession was decided on the basis of continuing the family line and performing the necessary death rites. According to the doctrine of [Bhattoji] Dicshita, 'a daughter, who is mother of male issue, or who is likely to become so, is competent to inherit; not one who is a widow, or is barren, or fails in bringing male issue as bearing none but daughters, or from some other cause'. Ibid, p. 185.

saw this arrangement to mirror the rules of tenancy-in-common as understood in English common law so that a Dayabhaga family was held to enjoy unity of possession but not unity of ownership over their joint property.[40]

The Mitakshara family was understood to operate in a manner similar to that of another property-holding structure under English common law – the coparcenary. Colonial jurists established that a man governed by Mitakshara law had absolute and individual rights over self-acquired property but that ancestral property belonged to a family collective or coparcenary.[41] English common law permitted women to join a coparcenary,[42] but only male children could become Mitakshara coparceners. The legal structure of the coparcenary meant that the ancestral estate did not devolve from one generation to the next on the death of the family head, as with Dayabhaga law. Instead, membership of the Mitakshara coparcenary operated on the basis of descent so that a Hindu male child joined the coparcenary at birth. The coparcenary was thus understood not as a compact between consenting individuals but as a single body that held property in its own right, not on behalf of its individual members. A man's interest in the estate contracted with the birth of a male relative and expanded following the death of another coparcener, though these fluctuations were notional: individual shares in the property were understood to come into existence only when the estate was formally divided among members through legal partition. Up until then it was a single, undivided estate.

Colebrooke's work was soon followed by others. The authors of these works accepted the divisions mapped out by Colebrooke, but whereas the *Two treatises* had been based on ancient textual sources, these later works were more interpretative and digest-like. Scholars such as Colebrooke and Jones had done a great service in translating some of the key texts at the heart of Hindu law, but it was felt that 'the method pursued by the Hindu writers on jurisprudence is often very obscure, and always highly uncongenial to European taste'. Legal scholars, administrators and judges were encouraged to turn instead to 'the elegant work of Sir Thomas Strange [who published *Elements of Hindu law* in 1825],

[40] S. P. Khetarpal, 'Codification of Hindu law', in D. C. Buxbaum (ed.), *Family law and customary law in Asia: a contemporary legal perspective* (The Hague, 1968), p. 215. On tenancy-in-common under English common law see L. D. Wardle and L. C. Nolan, *Fundamental principles of family law*, 2nd edn (Buffalo, N.Y., 2006), p. 215.

[41] Colebrooke, *Two treatises on the Hindu law of inheritance*, pp. 242–256.

[42] Under English common law coparceners were often female. Sir William Blackstone, *Blackstone's commentaries on the laws of England*, ed. W. Morrison (London, 2001), pp. 151–152.

the sound, though often too severe, criticism of Sir Francis Macnaghten [whose *Considerations on the Hindoo law as it is current in Bengal* appeared in 1824], and the concise and explicit Principles of Hindu Law by his son', William Hay Macnaghten, which was published in two volumes in Calcutta between 1828 and 1829.[43]

Legal scholarship outside India also influenced colonial understandings of Hindu and Muslim law, as well as the relationship of these laws to other, non-Indian, legal systems. The work of Sir Henry Sumner Maine was particularly significant in this regard. In his *Ancient Law*, published in 1861, Maine portrayed social development in terms of a movement from a legal system premised on status within group relationships to one based on contract and individual property rights.[44] Status rested on locally specific customary practices. It was only where societies codified these customs to develop universally applicable notions of legal subjecthood that the move towards contract became possible.[45] This was a historically contingent rather than inevitable development: the move towards contract was 'the *precarious* accomplishment of progressive societies . . . [and] progressive societies were historically exceptional'.[46] This allowed Maine to construct a spatial, as well as temporal, vision of modernity. English law, with its universal framework of the contracting individual, represented the pinnacle of this form of progress. But it existed in a world in which other societies had not yet achieved the same level of progress and therefore still organised themselves according to local customary relationships.

Within the broad spectrum of legal development, Maine viewed Hindu law as particularly archaic and underdeveloped, arguing that the Hindu joint family reflected the survival 'in absolute completeness' of the Roman doctrine of *patria potestas* under which the head of the family held power to the negation of the claims of other members, particularly women.[47] Maine did not discuss the various schools of Hindu law, but

[43] Morley, *The administration of justice in British India*, p. 237. W. H. Macnaghten, *Principles and precedents of Hindu law, being a compilation of primary rules relative to the doctrine of inheritance, contracts and miscellaneous subjects; and a selection of legal opinions involving those points delivered in the several Courts of Judicatures subordinate to the Presidency of Fort William. Together with notes illustrative and explanatory, and preliminary remarks, in two volumes* (Calcutta, 1828 and 1829).
[44] Maine, *Ancient law*, especially pp. 168–170.
[45] Ibid, pp. 21–30; K. Mantena, 'Law and "tradition": Henry Maine and the theoretical origins of indirect rule', in A. Lewis and M. Lobban (eds.), *Law and history* (Oxford, 2004), pp. 163–165.
[46] Mantena, 'Law and "tradition"', p. 162.
[47] Maine, *Ancient law*, p. 153. Maine's thesis owed much to ideas of Social Darwinism shaping intellectual thought at this time, see L. Denault, 'Partition and the politics of the joint family in nineteenth-century north India', *The Indian Economic and Social History Review*, 46, 1 (2009), pp. 32–40.

the logic of his argument gave rise to a sense of hierarchy within Hindu law. Many scholars came to consider Dayabhaga law to be more modern than Mitakshara, not simply because it was based on more recently written texts but because its recognition of individual property rights reflected an active critique of Mitakshara joint property rights.[48]

Maine's thesis had somewhat different implications for Muslim law. Maine himself made little mention of 'Anglo–Muhammadan' law in his *Ancient Law*, remarking only that political authority in Muslim families passed according to practices of primogeniture akin to those of Celtic societies but that in all other forms of succession, property was divided among all children, male and female.[49] He did not elaborate on what this meant for his thesis of social development, but a key implication of his argument was that as a legal structure, Muslim law was more modern than Hindu.

His 1861 thesis won Maine international repute as well as the invitation to become Law Member to the Indian Viceroy. In this position he played an influential role in the restructuring of the Indian legal system following the transition to Crown rule in 1858, as Karuna Mantena has explored.[50] Maine's experiences in India in the aftermath of the 1857 Uprising had important consequences for his legal theory.[51] Observing the colonial legal system on the ground, Maine expressed concern at the way in which British administration had altered indigenous law. His conviction that a community's legal system reflected the maturity of its social relationships led him to argue that the 'mixing' of different bodies of law would lead not to progress but to social chaos and corruption. A society's move from custom to contract could be driven by the internal logic of the legal system and the society it governed; it could not be imposed from outside. As a result, Maine advocated codification of the Indian legal systems not as a means to modernise them, as Utilitarians proposed, but to protect them from English law.[52]

Under Maine's watch, the law reforms of the 1860s did much to consolidate the emerging schools of Anglo–Hindu and Anglo–Muslim law in ways that made their different forms of property relations their

[48] A. Gledhill, 'The influence of common law and equity on Hindu law since 1800', *The International and Comparative Law Quarterly*, 3, 4 (1954), p. 581; J. Duncan and M. Derrett, 'The relative antiquity of the Mitakshara and the Dayabhaga', *Madras Law Journal*, 2 (1952), journal section 9–14, reprinted in Derrett, *Essays in classical and modern Hindu law, Vol. 1* (Leiden, 1976), pp. 198–206.

[49] Maine, *Ancient law*, pp. 242–243.

[50] Mantena, *Alibis of empire*, especially Chapters 3 and 4.

[51] Sturman, *The government of social life in colonial India*, p. 20. See also Maine's *Village communities in the East and West. Six lectures delivered at Oxford* (London, 1871).

[52] Mantena, *Alibis of empire*, pp. 107–113.

central defining feature. From 1864 the practice of taking advice about indigenous customs from native informants was abandoned, thereby raising further the legal importance of the already highly influential body of texts developed by colonial scholars.[53] In terms of Hindu law, custom was given precedent over textual sources, though the shift to textual legal sources meant, ironically, that custom itself came to be heavily codified.[54] With Muslim law, custom was seen to dominate with regard to only some areas of law governing specific Indian Muslim communities, reflecting colonial jurists' understanding of the primarily scriptural basis of this legal system.[55] Defining more clearly the parameters of the different personal legal systems, these changes reflected Maine's concerns to protect personal law from the influence of direct colonial intervention. Yet this concern to protect Indian personal laws because of their difference from English law was premised on a view of legal development that already rested on a comparison between these legal systems. Indian, or more especially Hindu, law needed to be protected because it was not as developed as, and therefore seen as inferior to or weaker than, its English counterpart.

The nexus between individual property rights and modernity was made more concrete by the expansion of market governance that began around the same time. From the 1870s, the introduction of various regulations from the metropole to India created the notion of a 'market' which was framed in terms of English, commercial law but presented as a single and uniform space not confined to a particular people or 'nation'.[56] Systems of property rights that did not conform to these regulations were therefore reaffirmed as locally and culturally specific, markers of a society that still adhered to custom rather than a more sophisticated, uniform code of law.[57] Within this framework, the Mitakshara joint family was seen as particularly primitive and undeveloped, as compared with Dayabhaga law as well as other non-Hindu legal systems.[58]

[53] Derrett, *Religion, law and the state in India*, pp. 296–307; Nair, *Women and law in colonial India*, pp. 20–30.
[54] Sturman, *The government of social life in colonial India*, Chapter 4.
[55] One important such group of Muslims were agriculturalist landholders in Punjab, D. Gilmartin, 'Kinship, women and politics in twentieth-century Punjab', in G. Minault (ed.), *The extended family: women and political participation in India and Pakistan* (Delhi, 1981), pp. 151–170, and his *Empire and Islam: Punjab and the making of Pakistan* (London, 1988), pp. 13–18; on Maine's influence on the colonial policies that underpinned this legal difference see C. Dewey, 'The influence of Sir Henry Maine on agrarian policy in India', in Diamond (ed.), *The Victorian achievement of Sir Henry Maine* (Cambridge, 1991), pp. 353–375.
[56] Goswami, *Producing India*, especially Chapter 1.
[57] Birla, *Stages of capital*, especially Chapter 1.
[58] See the Hindu Law Commission's discussion regarding Dayabhaga and Mitakshara succession rights in Chapter 4.

Muslim law occupied a more complicated position in these debates. Individual property rights and the contractual basis of marriage were firmly established as the defining feature of 'Anglo–Muhammadan' law following the reforms of the 1860s, but, by the early twentieth century, some British jurists had begun to argue that these features should not be seen as proof of the legal system's modern character. In the 1903 edition of his digest on Anglo–Muhammadan law, Sir Roland Knyvet Wilson conceded that:

> The Muhammadan Law of Property and Contract is not without its good points, e.g. the encouragement offered to agricultural enterprise by the principle that 'whosoever cultivates lands does thereby acquire the property of them' . . . Up to a certain point, indeed, the spirit of Islam is very sympathetic towards commerce, as might be expected, considering that its founder began life as a commercial agent. But the whole law of sale, mortgage and loan is fatally vitiated by the anti-usury craze.[59]

Drawing on arguments that late nineteenth-century Hindu reformers had used to defend their sacramental marriage traditions, Wilson inverted Maine's thesis by arguing that Muslim marriage took the principles of contract too far. Unlike the situation under Christian law, he contended:

> Reunion of husbands and wives is emphatically *not* among the promised joys of the Moslem paradise, nor do the advantages in this life, to the husband of concentrated domestic affection and to the children of prolonged maternal care, appear to have impressed themselves at all adequately on the mind set of the Prophet. Family life, as modern English men understand the term, was beyond the range of ordinary Arab experience.[60]

By the turn of the twentieth century, therefore, the Hindu and Muslim personal legal systems had come to be defined primarily in terms of their property relations to form a hierarchy of colonial subjects' modern identities: those governed by Islamic law had a somewhat ambiguous position but were somewhere closer to the top of this structure, while those governed by Mitakshara were at the bottom.

The Indian family as religious or economic unit? Market regulation and personal law reform

The 1860s' law reforms meant that there were important differences in the way in which Hindu and Muslim personal laws were seen to relate to the supposedly modern structure of the 'economy' and the law of

[59] R. K. Wilson, *Anglo–Muhammadan law: a digest*, 2nd edn (London, 1903), pp. 69–70.
[60] Ibid, pp. 74–75.

contract and individual property rights by which it was governed. Maine's argument that legal modernisation was an internal process, that had to take place away from outside interference, had important ramifications for the dynamics of colonial power. While some Indians, such as Gour, with whom this chapter opened, drew on Maine's ideas to critique the colonial administration of law, the wider implication of Maine's thesis was that modernity was the preserve of only a few, European societies. As Wilson's 1903 comments about Muslim law show, colonial jurists saw even those non-Europeans who acknowledged individual contractual rights in principle as deficient in the qualities that made European societies 'modern' economic powers.[61] Indians might aspire to follow British society's path towards legal modernity, but the move to individual property rights necessarily entailed abandoning the traditions that were seen to define their identity vis-à-vis the colonising power. The property-holding individual thus came to be seen simultaneously as a marker of legal modernity, against which all societies could be judged, and as the product of European societies' very particular historical development.

Hindu family trading firms, which were understood to hold property as a collective, found themselves at the heart of this legal contradiction. As the colonial government adopted laissez-faire economic models that emphasised the need for the free circulation of capital, the Hindu undivided family came to be regarded as increasingly anomalous in terms of market governance. This was particularly true in relation to the imposition of income tax, which will be analysed in more detail in the next chapter. Arguing that Hindu law did not recognise individual property rights, the colonial administration insisted on taxing Hindu family firms and businesses as a single unit, with no recognition of individual shares.[62] At the same time, increasing numbers of land sales and levels of agrarian debt in this period gave rise to questions about a Hindu coparcener's personal financial liability in relation to the wider joint family estate and thus the precise nature of Hindu families' 'jointness'.[63]

[61] Wilson believed the Prophet Mohammad, and by extension the Qur'anic texts attributed to him, were only 'partially responsible for this. Arguing that the Koranic [sic] texts do not necessarily imply more than disapproval of extortionate money-lending', he blamed non-religious customary traditions and 'Caliph Omar [who] thought it safer from a religious point of view to take them in the strictest sense that the words could possibly bear', for this 'corruption' of sound economic practices. Wilson, *Anglo–Muhammadan law*, p. 70.

[62] See Chapter 2 and Birla, *Stages of capital*, pp. 54–58.

[63] Gledhill, 'The influence of common law and equity on Hindu law since 1800', pp. 581–588; Washbrook, 'Law, state and agrarian society', pp. 668–670.

The Bombay High Court's attempts to deal with these questions produced case law that acknowledged and gave greater definition to private property rights within the Hindu law administered in the Bombay Presidency.[64] However, justices in the Madras High Court and the High Courts in non-Presidency areas took a different line and continued to uphold more literal readings of Mitakshara law.[65] The final decades of the nineteenth century saw considerable debate about the limits of joint family property ownership, especially among the professional and mercantile communities in Madras.[66] As Pamela Price has argued, the latter half of the nineteenth century saw an elite group of upper-caste lawyers come to dominate the politics of the Madras Presidency.[67] These lawyers played a crucial role in moving the debate about Hindu law reform into the Indian legislatures.

In 1891, Sir Vembakkam Bhashyam Iyengar, a prominent lawyer and a nominated member of the Madras Assembly, proposed a Hindu Gains of Science Bill to establish the professional income of a Hindu coparcener as his individual, self-acquired property.[68] As with the Bombay court judgments, his proposal seems to have been motivated by changes in the supposedly separate sphere of 'public' economic law, in this case the introduction of the 1886 Income-tax Act, which made a Hindu family firm liable to tax as a single entity rather than as a collection of share-holding individuals. Shortly after the Act had come into operation, finance officials in Bombay enquired as to whether a professional salary received by a member of a Hindu undivided family should be taxed as part of the family's joint income.[69] Provoking considerable discussion within the Bombay administration, the query eventually prompted the

[64] R. Sturman, 'Property and attachments: defining autonomy and the claims of family in nineteenth-century western India', *Comparative Studies in Society and History*, 47, 3 (2005), pp. 611–637; Sturman, *The government of social life*, pp. 112–124.
[65] Gledhill, 'The influence of common law and equity on Hindu law since 1800', p. 585.
[66] Sreenivas, *Wives, widows and concubines*, pp. 47–51.
[67] P. G. Price, 'Ideology and ethnicity under British imperial rule: "Brahmans", lawyers and kin-caste rules in Madras Presidency', *Modern Asian Studies*, 23, 1 (1989), especially pp. 162–172. Such lawyer-politicians played an important role in the interwar debates about Hindu law reform. H. L. Levy, 'Lawyer-scholars, lawyer-politicians and the Hindu Code Bill, 1921–1956', *Law & Society Review*, 3, 2/3 (November 1968–February 1969), pp. 303–316.
[68] Vembakkam Bhashyam Iyengar was appointed to the bar in 1872 and became a prominent figure within the administrative and legal structures of Madras over the course of his career. Price, 'Ideology and ethnicity under British imperial rule', pp. 163–164.
[69] Note by F. L. Latham, Advocate General, Bombay, 27 March 1886, NAI, Finance Department, Sep. Rev A, January 1887, Nos. 37–46.

intervention of central government officials.[70] In a circular dated 20 May 1886, the Finance Department advised that employers should 'deduct the tax solely with reference to the month's salary unless the Collector brings to his notice that the recipient has other income'.[71] Both the Advocate General of Bombay and the Commissioner of Income Tax in Bengal agreed with this interpretation and officials were instructed to collect tax on this basis.[72] The Madras administration disagreed, however, and continued to uphold the Madras High Court's interpretation of Mitakshara coparcenary property, meaning that if a Hindu man was understood to have achieved his professional position as a result of an education paid for from joint funds, his salary belonged to his family. Though it did not mention income tax specifically, Iyengar's Bill sought to apply to Madras the legal understanding of the relationship between a man's salary and his joint family property that was already being followed by income tax officers in Bengal and Bombay.

Reflecting contemporary ideas about the relationship between individual property and social progress, Iyengar presented his Bill as a measure to secure economic efficiency and meet modern financial needs. His Bill won considerable support among the lawyers and professionals who were emerging as a lobby for law and social reform in the region.[73] But it met with strong opposition, both outside the provincial legislature and within it. Opponents argued that the Bill served the interests of a very small section of society and was therefore unrepresentative of the needs and desires of a more general Hindu community. This opposition was presented not in terms of class or economic interests but in relation to religious sentiment. Echoing Maine's views about the way in which modern contract law could corrupt customary practices, opponents of the Bill argued that it reflected only the interests of Hindus who had become detached from the family structures that had, by this point, come to epitomise 'real Hindu life'. According to one Tamil newspaper, the

[70] Ibid, Note by John De Courcy Atkins, Under Secretary to the Government of Bombay, Finance Department, to Government of India, Department of Finance and Commerce, 15 November 1886, Note by J. R. Naylor, the Remembrancer of Legal Affairs, 29 September 1886.

[71] Cited in Note by John De Courcy Atkins, ibid.

[72] In their investigations on this matter, Bombay officials examined the 'Income Tax Manual' written by Mr W. H. Grumley, Commissioner of Income Tax in Bengal, for use in his province, which recorded the Advocate General of Bengal's view that to include a salary in the estate of a joint family for purposes of income was 'repugnant to the subject and context as salary is paid to an individual and not a family'. John De Courcy Atkins, Under Secretary to the Government of Bombay, Finance Department, to Government of India, Department of Finance and Commerce, 15 November 1886, Ibid.

[73] C. H. Heimsath, *Indian nationalism and Hindu social reform* (Princeton, 1964), p. 254.

Bill was designed for people 'who are utterly devoid of sympathy towards their parents and relations'.[74] Such arguments reaffirmed the notion that the jointly held family estate was a central feature of Hindu religious, not simply economic, life. The colonial administration was urged to uphold its commitment to protect religious freedoms over and above its pledge to secure social enlightenment. After nine years of legislative wrangling and disputes, the Bill was finally passed by the legislature in 1900, only to be vetoed by the Governor of Madras.[75]

It was not only Hindus who felt their interests to be circumscribed by colonial interpretations of personal law. Raughly co-terminous discussions about Muslim *waqf* law provide an interesting point of comparison with the debates about Iyengar's bill. Whereas expansion of economic regulation and taxation had sharpened the notion that the Hindu family held property as a single, joint collective, this legal framework led the courts and administration to emphasise individual property rights in Anglo–Muslim law in ways that created problems for wealthy Muslims. Colonial officials' growing concern with economic circulation in the later nineteenth century led them to attempt closer regulation of Islamic *waqf*.[76] Derived from the Arabic *waqafa*, meaning to stop or hold, a *waqf* estate was one that could not be affected by succession practices, by sale or by seizure.[77] The Qur'an made no reference to such an estate, but by the late eighteenth century *waqf* endowments had become commonplace, not only in India but in many Muslim societies.[78] British conceptions of jurisprudence prompted colonial jurists to translate what had been a means of holding property structured around individual and community relations into two separate institutions: *waqf-i-'amm*, understood as a public *waqf*, made to bring financial benefit to a public or religious institution, such as a school or mosque, and *waqf-i-khandan*, seen as a private *waqf*, made to support family members. As colonial officials sought to tighten their control over the circulation of capital from the 1870s onwards, this latter form of *waqf* became the target of growing

74 *Swadesamitran*, 6 March 1891, cited in Sreenivas, *Wives, widows and concubines*, p. 51.

75 Heimsath, *Indian nationalism and Hindu social reform*, pp. 253–254.

76 Kugle, 'Framed, blamed and renamed', p. 293.

77 G. C. Kozlowski, *Muslim endowments and society in British India* (Cambridge, 1985), pp. 1–3.

78 D. S. Powers, 'Orientalism, colonialism and legal history: the attack on Muslim family endowments in Algeria and India', *Comparative Studies in Society and History*, 31, 3 (1989), pp. 536–538; M. Shatzmiller, 'Islamic institutions and property rights: the case of the "public good" waqf', *Journal of the Economic and Social History of the Orient*, 44, 1 (2001), pp. 44–74. The evolution of the *waqf* estate has been linked to Umar, who, in 634 BC, became the second caliph. Kozlowski, *Muslim endowments and society in British India*, pp. 10–14.

criticism, on the grounds that, in locking wealth away in perpetuity, it contravened both the economic logic of market regulation and the Qur'anic rules about the division of one's estate.

The administration's interest in public *waqf* took place against a very particular socio-political backdrop. The 1857 Uprising had instilled among the colonial administration a sense of suspicion of India's 'Muslim community', and many of the Muslim landed elites in regions affected by the conflict were subject to economic penalties.[79] By the early 1870s a new generation of Muslim leaders had come to the fore, committed to reversing this decline by building up an Indian Muslim community that was grounded in religious tradition but trained in a manner that would allow them to work within the 'secular' bureaucracy of the colonial state.[80] Seen as an impediment to the financial interests of an already struggling Muslim elite, Muslim reformers were motivated by the administration's attitude towards private *waqf* to engage with official policy and power structures.[81]

In 1877, Sir Syed Ahmed Khan, perhaps the most celebrated figure of this revivalist movement, published an article entitled 'A plan for saving Muslim families from destruction and extinction', in which he expressed concern about the impact of Anglo–Muslim succession law on the financial position of the Muslim landed elite. Sir Syed argued that colonial jurists' rigid application of Qur'anic succession law had led to excessive fragmentation of estates, making it impossible for future generations to maintain either the financial or the social position of their ancestors.[82] He urged the Muslim landed elites to transform their estates into *waqf* endowments so as to remove their property from the pressures of Islamic succession law and the claims of moneylenders. Two years after publishing his pamphlet, Sir Syed introduced a Bill to the

[79] P. Hardy, *The Muslims of British India* (Cambridge, 1972), Chapters 3 and 4; F. Robinson, *Separatism among Indian Muslims* (London, new edn 1993), pp. 100–102.

[80] F. Shaikh, *Community and Consensus in India: Muslim Representation in Colonial India 1860–1947* (Cambridge, 1989), Chapters 2 and 3; F. Robinson, 'The British Empire and Muslim identity in South Asia', *Transactions of the Royal Historical Society*, 8 (December 1998), especially pp. 276–279; A. Jalal, *Self and sovereignty: individual and community in South Asian Islam since 1850* (London, 2000), Chapter 2.

[81] Kugle sees these events as the death knell for pre-colonial Muslim law in the Indian subcontinent, arguing that as reformist movements appropriated the structures of Anglo–Muhammadan law, scholars still familiar with *fiqh* were sidelined from public life. While the latter continued to adjudicate away from the state, this 'privatised' or 'secularised' form of Muslim law was not true *fiqh* – a system of law that was intended to govern all areas of a Muslim's life. Kugle, 'Framed, blamed and renamed', pp. 301–313.

[82] S. A. Khan, 'A device to salvage Muslim families from destitution and ruin', cited in K. Rashid, *Wakf administration in India: a socio-legal study* (New Delhi, c. 1978), pp. 129–130.

Viceroy's Legislative Council calling for full legal recognition of a Muslim's right to make a *waqf* endowment.[83]

The colonial administration could not simply dismiss Sir Syed's proposal, but officials were concerned that other Indian Muslims would not share his views. Comments and opinions received by local governments following circulation of the measure seemed to confirm this anxiety. Many of the *ulama* (Islamic scholars) questioned by government officials opposed Sir Syed's proposals, arguing that they contravened Islamic scripture and thus infringed on the colonial administration's pledge to protect the religious traditions of its subjects. Dennis Fitzpatrick, Secretary to the Legislative Council, speculated that this opposition was likely to be based as much on grounds of class as of theology.[84] Most of the *ulama* did not hail from Sir Syed's socio-economic background, and in many regions of India, religious leaders had a somewhat antagonistic relationship with Muslim elites, who, they argued, cared little for matters of piety and good Islamic practice.[85]

Events in the court helped to generate more widespread support for Sir Syed's proposals among Indian Muslims. In his 1882 ruling, in *Fatima Bibi* v. *Advocate General of Bombay*, Judge Raymond West concluded that a *waqf* made to benefit family members was valid under Islamic law provided that the endowment clearly stated that the ultimate beneficiary of the estate would be 'the poor' or some other 'charitable' or public purpose.[86] This ruling came at a moment when changes in imperial market governance were serving to redefine legal notions of charity. As Ritu Birla has argued, laissez-faire market governance was premised on the notion that the colonial administration had a duty to safeguard the 'healthy' flow of capital on the basis that that was necessary to secure the economic well-being of those whom it governed, or 'protected'. In line with this, practices that seemed to take wealth out of this circulatory flow of capital were seen to contravene the interests of society, whose welfare the market was supposed to secure. Charitable giving, the only grounds on which it was understood to be legitimate to bind up property,

[83] Kozlowski, *Muslim endowments and society in British India*, p. 160.
[84] Ibid, pp. 160–161; Rashid, *Wakf administration in India*, pp. 132–134.
[85] Robinson, *Separatism among Indian Muslims*, pp. 27–28. Similar divisions existed in other states with large Muslim populations, such as Punjab, see D. Gilmartin, *Empire and Islam: Punjab and the making of Pakistan* (Berkeley, 1988), pp. 52–56, 62–65. See also Kugle's argument about the relationship between lawyers and religious leaders in footnote 81 above.
[86] Kozlowski, *Muslim endowments and society in British India*, p. 137; Powers, 'Orientalism, colonialism and legal history', p. 558.

away from the currents of the state-regulated 'market', was defined in similar terms, as a gift that benefited the interests of the wider body of citizens rather than private individuals. Juxtaposing the space of the market and contract law with a world of status and private relationships, measures such as the Indian Religious Endowment Act of 1863 and the Indian Trusts Act of 1882 defined the recipient of charity as an abstract body quite removed from personal interests and affect.[87] For legal purposes, therefore, charity came to be understood as something outside of and opposed to familial interests, with important implications for judicial decisions about *waqf* law.

In 1889 the Privy Council heard a case concerning a mixed-type *waqf* – an endowment made to benefit both family members and religious institutions. Just before his death Shaikh Muhammad, a wealthy land-owner and merchant, founded a *waqf* to endow several schools and mosques, leaving the remainder of his estate to be divided between his three sons. In his judgment, Lord Hobhouse explained that he and his colleagues in the Council did not wish to 'lay down any precise definition of what will constitute a valid *wakf*[88] or to determine how far provisions for the grantor's family may be engrafted on such a settlement without destroying its character as a charitable gift'. But, he noted, they 'have not been referred to, nor can they find any authority showing that, according to Muhammadan Law, a gift is a good *wakf* unless there is a substantial dedication of the property to charitable uses at some time or other'.[89]

Hobhouse's definition of 'a good *waqf*' reflected the way in which charitable giving had been defined in relation to market governance. The Law Lord and his colleagues struggled to see how the opposing interests of the intimate family and the abstract public could be balanced in a single legal instrument. Describing funds given to mosques and schools under the endowment as 'customary usages', he argued that the primary purpose of the *waqf* involved in this case was not charitable but the 'self-aggrandizement of the founder's family'.[90] On these grounds, he argued, the *waqf* was 'illusory' – a term used in English trust law to describe trusts created to cover a debt, in which the debtor uses a trustee to manage debt payments without giving up all rights in the

[87] Birla, *Stages of capital*, especially Chapter 3.
[88] While colonial lawyers used the term *wakf*, the accepted modern transliteration of this Arabic term is *waqf*. I have used *waqf* as far as possible, except in quotes, which use the colonial spelling, and in the titles of legislative measures, which retain the spelling used in the documents passed by the Indian legislature.
[89] *Shaikh Muhammad Ahsanullah Chowdhry* v. *Amarchand Kundu* [1889] I.L.R. 17, Calc, 498, cited in Kozlowski, *Muslim endowments and society in British India*, pp. 138–139.
[90] Ibid, p. 138; Powers, 'Orientalism, colonialism and legal history', p. 558.

property, as would be the case in a 'full' or 'proper' trust.[91] Muslim *ulama* had opposed Sir Syed's drive to establish the practice of making family *waqf* on the basis that it contravened Islamic legal principle. For Hobhouse, however, a family *waqf* was illegal because it did not conform to the principles of English trust and charitable laws.

J. T. Woodroffe, Advocate General of Bengal, followed Hobhouse's line of argument in a similar case heard by the Calcutta High Court in August 1892. Representing a Hindu moneylender against the claims of a Muslim family, Woodroffe argued that the *waqf* in question was invalid as it was drawn up primarily to benefit family members and not public or charitable causes. This argument elicited an angry response from Justice Ameer Ali, an Indian member of the judicial bench that heard the case.[92]

Ameer Ali objected strongly to the dismissive attitude that Woodroffe showed towards Islamic law in his ruling, particularly his description of Islamic arguments regarding *waqf* law as 'the learned lucubrations of the Mahomedan casuists' who 'never got beyond their studies'.[93] Writing his own judgment for the case, Ameer Ali argued that Woodroffe was mistaken in his view that Islamic law did not allow the use of endowments to benefit family members, highlighting sections in the *Hedaya* as evidence. This misunderstanding, Ameer Ali explained, had arisen from the way in which this text had been translated by early colonial scholars.

> It must be remembered that the English version is a rendering of a Persian translation of the original Arabic Hedaya with many interpolations and omissions. Mr. Hamilton in translating the Persian version into English rendered the word wakf into 'appropriation'; but as every 'appropriation' cannot be regarded as wakf, he took care to add in a footnote that it meant appropriations of a pious or charitable nature.[94]

Confusion had arisen, the Calcutta judge explained, from the way in which British judges had interpreted this footnote. The colonial 'courts have recognised such *wakfs* only as are for purely charitable and religious purposes in the restricted sense in which those words are understood in

[91] J. Indermaur and C. Thwaites, *Epitome of leading cases in conveyancing and equity* (London, 1903), p. 66. I am grateful to Neil Jones for explaining this point to me and directing me to suitable legal sources.

[92] Ameer Ali was made a Judge of the Bengal High Court in Calcutta in 1890. In 1904 he moved from India to the UK and in 1909 became the first Indian member of the Privy Council. K. K. Aziz, *Ameer Ali: his life and work* (Lahore, 1968), pp. 11–17.

[93] Ameer Ali made particular note of this phrase in his response to Woodroffe, citing it twice, and strongly disputed this claim. Dissenting opinion of Justice Ameer Ali in *Shuk Lal Poddar and others* v. *Bikani Mia* [1893] ILR 20 Calcutta 132–5.

[94] [1893] ILR 20 Calcutta 162–3.

English Courts of Justice ... A reference to any book on Mahomedan religion or law will show that the words "charitable purposes" are not used in Mussalman Law in the restricted sense in which it has been attempted to use them in the English Courts of Justice', he explained.[95] Ameer Ali argued that to judge Islamic practices by English legal norms was inappropriate and counter to the colonial administration's policy of religious neutrality. Citing another British jurist, William H. Morley, in support, he maintained:

> In considering the propriety of altering or abrogating the Hindu or Mahomedan Laws, all preconceived notions of the relative excellence of the English and native systems of jurisprudence should be taken as secondary considerations. Nor should it be called in question whether such systems are in themselves good or bad, for it should never be forgotten ... that they are an integral part of the faith of that people, and that though we may not be bound by absolute treaty, we have virtually pledged ourselves to preserve them by repeated proclamations and enactments.[96]

Ameer Ali's judgment was not simply a defence of family endowments but a critique of the universalising character of English law. He argued that Muslim law was not superior, or even inferior, to English law but simply different, and as such it should be administered by the colonial courts on the basis of its own logic. This reasoning challenged the notion that English law was a globally applicable framework, presenting it instead as a legal system that was as particular and regionally specific as Muslim and Hindu personal law. At the same time, Ameer Ali's judgment can be read as an assertion of his own legal authority vis-à-vis his British colleagues. In critiquing colonial jurists' translation of Muslim religious texts, he suggested that indigenous legal scholars were better placed to interpret and administer these scriptures.

Ameer Ali did not manage to persuade the other judges in the case of his view. His claims were firmly rejected by the Privy Council in its decision in the 1894 case of *Abdul Fata Mahommed Ishak* v. *Russomoy Dhur Chowdhry*. Presiding over this case, Lord Hobhouse referred in his judgment to Ameer Ali's arguments but contended that these were based on 'texts of an abstract character' and 'imperfectly stated' precedent. He contrasted this with what he saw as 'the general law of Islam' under which gifts to unborn persons were prohibited. Referring to the *waqf* in question, Hobhouse again found that the endowment made only cursory reference to helping the poor and that the bulk of its provisions were designed to retain wealth within the family. He and his colleagues stood firmly committed to the application of Muslim law, he explained. But

[95] Ibid, 140. [96] Ibid, 138–139.

they felt that 'it would be doing wrong to the great lawgiver to suppose that he is thereby commending gifts for which the donor exercises no self-denial . . . which are to form the centre of attraction for accumulations of income and further accessions of family property . . . which seek to give to the donors and their family the enjoyment of property free from all liability to creditors; and which do not seek the benefit of others beyond the use of empty words'.[97] Hobhouse could concede that there may be some sanction within Islamic religious texts for perpetual trusts, but, influenced by contemporary ideas about legitimate market governance, he believed that texts that barred this practice should be given greater legal weight. Though Hobhouse argued that he was applying Muslim, or Anglo–Muhammadan, law in this case, his decision reinforced the notion that Muslim law shared many basic principles and assumptions with colonial commercial law.

The manner in which Indian personal laws were understood to differ from the purportedly universal structures of English, commercial law was thus a source of frustration for propertied Muslims and Hindus. In Madras especially, Hindu merchants and professionals felt that their interests were undermined by the way in which the colonial court insisted on the incommensurability of the Hindu joint family with the individual property rights of English and commercial law. For wealthy Muslims, colonial officials' insistence on the similarity between Islamic property law and the principles of market governance made it difficult to protect the future well-being of family members. Indeed, the Privy Council's 1894 interpretation of *waqf* law seemed to question whether Muslim law could be applied to such endowments at all. This attempt by British jurists to set down the limits of Muslim law also upset and angered more orthodox Muslim leaders and scholars, many of whom had hitherto opposed reform of *waqf* endowment practices.[98] Thus, by the end of the nineteenth century, colonial jurists' responses to demands for Islamic law reform had brought together what had earlier appeared to be an unlikely coalition of forces: landed elites, lawyers and more religious orthodox Muslims.

The Mussalman Wakf Validating Act, 1913

Constitutional reform in the early twentieth century provided Muslim elites with opportunities both to shore up their political influence within the state and to reform the law regarding family endowments. In 1906,

[97] *Abdul Fata Mahommed Ishak (and others)* v. *Russomoy Dhur Chowdhry and others* [1894] 22 IA 76, p. 87.

[98] Powers, 'Orientalism, colonialism and legal history', p. 558. In fact, Ameer Ali had originally opposed Sir Syeed Khan's 1879 Bill on the grounds that it was not in line with *shariah* prescription. Kozlowski, *Muslim endowments and society in British India*, pp. 161–162.

Lord Morley, then Secretary of State for India, announced that the British were willing to grant more political influence to Indians. Seeing reform as a means of strengthening, rather than loosening, imperial control, British officials agreed that political representation was to be managed on the basis of communal interests rather than of population size. The ensuing discussions opened profound gulfs between Hindu and Muslim representatives. Groups such as the London branch of the Muslim League lobbied hard for separate Muslim electorates, which the British eventually conceded.[99] The constitutional negotiations also deepened splits between extremist and moderate wings within the Hindu-majority nationalist movement.[100] By the time the new constitution, based on the 1909 Government of India Act, came into force, Indian politics had become bitterly divided. The end of 1910 saw several attempts at rapprochement between the various factions. Healing the rift between extremists and moderates was at the top of the agenda for the Indian National Congress session held in Allahabad in late December of that year.[101] This meeting was swiftly followed by a special Hindu–Muslim conference, also at Allahabad, which was chaired by Sir William Wedderburn, the former Indian Civil Servant and founding member of the Congress, who had been drafted in to serve as its president – and 'peacemaker' – for the year.[102]

In February 1910, just after representatives had taken their seats under the constitution, Muhammad Ali Jinnah raised a question in the Governor General's Council about the Privy Council's 1894 ruling on family *waqf* and asked the government to take steps to alter it in light of Muslim opposition. Government officials explained that they themselves were unwilling to take such action but that they would consider a legislative proposal on the matter if it had the general backing of the 'Muhammadan Community'.[103] In March the following year, Jinnah introduced his Mussalman Wakf Validating Bill. A lawyer from Bombay, Jinnah was a prominent Muslim figure committed, as a member of the Indian National Congress, to Hindu–Muslim unity. Seen by contemporaries as highly ambitious, he was enabled by the Wakf Validating Bill to present

[99] For a close analysis of these discussions see Hardy, *The Muslims of British India*, pp. 153–167; Tejani, *Indian secularism*, pp. 116–143.

[100] G. Johnson, *Provincial politics and Indian nationalism: Bombay and the Indian National Congress 1880–1915* (Cambridge, 1973), Chapter 4.

[101] The Congress session and political rifts received wide coverage in the Indian press. For a brief sample of some of this detailed coverage see *Gujarati* (published in Bombay) 1 January 1911; *Karnatak Vritt* (Bijapur, Bombay Presidency) L/R/5/165; *Bharat Jiwan* (Benaras, UP) 2 January 1911; *Leader* (Allahabad) 4 January 1911, L/R/5/86; *Akhbar-i-Am* (Lahore, Punjab) 30 December 1910, L/R/5/192.

[102] *Tribune*, 28 December 1910, L/R/5/192.

[103] Kozlowski, *Muslim endowments and society in British India*, pp. 178–180.

himself as someone able to heal the religious rifts in the nationalist movement: the *waqf* issue had been one of the grievances cited by Muslim representatives as evidence of the fragility and political vulnerability of Indian Muslims during the discussions about political representation,[104] but it was now being resolved by Jinnah, a loyal Congressman.[105]

The Bill itself was very brief. Jinnah did not seek to provide a general description or defence of *waqf* endowments – his main aim was to overturn the Privy Council's 1894 *waqf* ruling. The Bill provided that a *waqf* could not be deemed invalid 'by reason of remoteness of benefit to [the] poor . . . No such wakf shall be deemed to be invalid merely because the benefit reserved therein for the poor or other religious, pious or charitable purpose of a permanent nature is postponed until after the extinction of the family, children or descendants of the person creating the wakf'.[106] It also established that all Muslims could use a *waqf* endowment to benefit their family, but that those governed by Hanafi law could also use an endowment to provide for their personal welfare.[107]

The original draft of the Bill contained a clause requiring official registration of all *waqf* endowments. This was no doubt intended to allay officials' fears about the dubious and unregulated nature of perpetuities. But the proposal met with strong opposition from some Muslims who complained that this was a modification of religious legal practice – registration was not needed to make a *waqf* valid according to Islamic religious texts so why should the colonial courts demand it?[108] This opposition presented *waqf* endowment as firmly linked with Islam and religious authority. It also did much to reinforce Ameer Ali's argument that Muslim law should be administered on its own terms – and even by its own 'people' – not those of English law. Though Jinnah himself did not sanction this view of Muslim law as necessarily religious, to secure unity among the Bill's supporters, he agreed to remove the clause regarding registration.[109]

[104] The *Paisa Akbar*, a Muslim-edited Urdu daily newspaper from Lahore, gives a brief history of the *waqf* debate in its 5 January 1911 edition, L/R/5/192.

[105] Jinnah is rumoured to have drafted his Bill in haste, in order to introduce it before another colleague, Shams al-Huda, was able to complete his own *waqf* Bill. Kozlowski, *Muslim endowments and society in British India*, p. 180.

[106] Clause 4, Mussalman Wakf Validating Act, 1913, Government of Pakistan, Ministry of Law, *The unrepealed central acts, with chronological table and index*, Vol. VI (1911–1919) (Karachi, 1952), pp. 137–138.

[107] L. Carroll, 'Life interests and inter-generational transfer of property avoiding the law of succession', *Islamic Law and Society*, 8, 2 (2001), pp. 255–256.

[108] See comments of Maulana Shibli Nomani, the Nizam of the Nadwat-ul-Ulma, Lucknow in *Aligarh Institute Gazette*, 19 July 1911, L/R/5/86.

[109] Kozlowski, *Muslim endowments and society in British India*, p. 181.

Bringing together the interests of Muslim lawyers, political representatives and religious leaders, the Bill became a rallying point for these otherwise quite different groups. The measure won support from Muslim organisations and newspapers across the country. The *Mashriq*, an Urdu daily from Gorakhpur in UP, published the Bill, along with the views of Islamic scholars on its provisions.[110] It urged its readers to hold public meetings to discuss the measure and to write to the government expressing their views.[111] Another Urdu newspaper, the weekly *Surma-i-Rozgar*, published in Agra, voiced strong support for the Bill, describing it as 'quite in accord with the principles of Muhammadan law'.[112] The *Vakil*, of Amritsar, argued that 'the creation of Wakf properties for the benefit of descendants is a recognised principle of the Muhammadan law; that all Musalmans are agreed as to the necessity and legitimacy of this principle'.[113] Members of the wealthy Muslim Khoja trading community also backed the Bill. The English language *Phoenix*, published in Karachi under the editorship of Jaffar Faddu, a Khoja, exclaimed that 'the Hon'ble Mr Jinnah has rendered a great service to the Muhammadan community by introducing a Bill on Wakfs in the Supreme Legislative Council', remarking that 'the country has long realised the necessity of having a law passed by Government in regard to Wakf trusts'.[114] The *Aligarh Institute Gazette* also supported Jinnah's measure, publishing the views of various Muslim representatives on the Bill, including Maulana Shibli Nomani, the Nizam of the Nadwat-ul-Ulma, Lucknow and Haji Muhammad Musa Khan.[115]

The leadership of the All India Muslim League issued their support for the measure. At a meeting in Nagpur in December 1910, members of the League condemned the Privy Council's interpretation of *waqf* law in a resolution that argued that it was 'unjust to invalidate an institution sacred to the Mussalmans, merely because it goes against English notions regarding perpetuation of properties'.[116] The Bill also won support from *ulama* both within and outside India. Khwajah Abd al-Majjid, a lawyer by training and leader of the Muslim Brotherhood of Progress, based in London, called on the Government of India to support legislation to overturn the Privy Council's earlier ruling. Like Ameer Ali, he argued

[110] *Mashriq*, 2 May 1911, L/R/5/86. [111] Ibid, 11 April, 1 August 1911.
[112] *Surma-i-Rozgar*, 1 and 8 July 1911, L/R/5/86.
[113] *Vakil*, 21 June 1911, see also its edition of 26 April 1911, L/R/5/192.
[114] *Phoenix*, 22 March 1911, L/R/5/166.
[115] *Aligarh Institute Gazette*, 19 July, 16 August 1911, L/R/5/86.
[116] Letter from Munshi A. Aziz Mirza, Secretary of the All-India Muslim League, to the Government of India, 22 March 1911, NAI, Legislative Department, Proceedings A, April 1913, Nos. 305–351.

that the current state of *waqf* law in India was the result of British scholars' misinterpretation of Islamic texts and urged the colonial administration to look to Turkey and Egypt, where family endowments were permitted, as examples of good Islamic jurisprudence. In the context of growing pan-Islamism, such an argument gave powerful political support to claims about Muslim self-governance and separatism.[117]

The Bill even found supporters among non-Muslim Indians, though for somewhat different reasons. The *Tribune* of Lahore supported Muslim opposition to the Privy Council's ruling on *waqfs* but was more measured in its response to Jinnah's Bill itself. 'It has to be remembered', its editor reminded readers, 'that the Privy Council and the High Court have refused to recognise such Wakfs, not because the Muhammadan Law on the subject was illogical, but because they thought that such dispositions were opposed to public policy. They have similarly been remorseless in the case of the Hindu Law.' The paper agreed that family *waqfs* were valid under Muslim law and Muslims should be allowed to avail themselves of them, but felt that 'public policy' should not be abandoned completely. 'It is essential . . . that stringent provisions . . . be made to protect all bona fide creditors, secured as well as unsecured, at the time a Wakf is made. Without such provisions, the measure will certainly be opposed to public policy.'[118] Islamic proscription of usury meant that such moneylenders would be largely Hindu.

The *Bombay Samachar* had a somewhat different take on the situation. Under Parsi editorship, the paper agreed that the Privy Council's decisions relating to *wakf* contravened the administration's pledge to govern Hindus and Muslims by their own laws and felt that, if Muslims supported the Bill, it should be passed. Yet the paper viewed the Bill itself as a retrograde measure that undermined the principles of the market. 'Muhammadans must guard against their awakening in social and educational matters being spoiled by wakf arrangements', the paper warned. 'While supporting the Bill it must also be seen that it does not encourage indolence and ignorance. In the economic interest of the country safeguards should be provided lest under the shadow of the wakf dishonest debtors are enabled to evade their creditors.'[119] Like his colleague at the *Tribune*, the editor of the *Bombay Samachar* clearly felt

[117] Written suggestions to Government of India on the wakf Bill from The Moslem Brotherhood of Progress (undated), NAI, Legislative Department, A Proceedings, April 1913, Nos. 305–351. Khwajah Abd al-Majjid listed himself as a lecturer on Muhammadan Law for the Colonial Office and author of several works on Muslim law, including one entitled *Wakf as Family Settlement*.

[118] *Tribune*, 22 March 1911. [119] *Bombay Samachar*, 25 March 1911.

that the interests and sympathies of his readers would lie closer to those who lent money to Muslim families than to the families themselves.

Moneylenders' interests aside, popular support for the Bill was sufficiently powerful to mean that it was enacted in 1913. For the Muslim landed elites, the Act was more a symbolic than a substantive victory as its provisions were not retroactive and so did little to help families already in financial crisis.[120] It did, however, help to build new alliances among groups of Indian Muslims, if only on a temporary basis. The Act fostered a sense that there existed some kind of 'Muhammadan community' in British India, defined in relation to religious practices. This perception appealed to the interests of Muslim lawyers, as well as to religious leaders, as it allowed them to call for power to oversee this legal system, on the basis that they were more familiar with the language and religious principles that shaped it than were British or non-Muslim Indian jurists. For much of the nineteenth century, Muslim law had been seen as compatible with the norms and ideology of western law. The 1913 Mussalman Wakf Validating Act began to alter this perception, presenting Muslim law in more definite religious terms, as a system distinct from colonial law and best shaped and administered by learned members of the Muslim 'community'.

Conclusion

By the start of the First World War, legislative debates about Muslim personal law had become an important forum within which Indian Muslims from a range of different backgrounds could make claims not only about Muslim identity but also about Muslim legal – and, by extension, political – autonomy in India. In 1892, Ameer Ali had argued that though it shared some characteristics with English commercial law, Muslim property law, or at least a small part of it relating to family endowments, operated according to its own logic and reason – a claim that was more in keeping with Maine's legal theory, that stressed the internal coherency of individual legal systems, and argued against their integration, than the argument set out by Hobhouse in his *waqf* judgment two years later. Moved by a Muslim legislator, Muhammad Ali Jinnah, the Mussalman Wakf Validating Act gave a new political dimension to Ameer Ali's arguments, linking Muslim political power with government of the 'community' governed by Muslim personal law.

[120] Powers, 'Orientalism, colonialism and legal history', p. 563.

While Ameer Ali had made his argument about *waqf* law specifically, he had argued that the same general principles of legal difference and autonomy from English law applied to Hindu personal law also. Yet the particular structure of Hindu personal law, as it had evolved under British rule, meant that Hindu jurists, and political representatives, found it much harder to stress the independence of their own legal system from the models of legal progress and development put forward by colonial jurists. Indian Muslim jurists were able to look to an established body of Islamic legal texts as well as to Islamic legal practices internationally to support their claims about the distinctly Islamic character of their legal system. The same body of texts did not exist in relation to Anglo–Hindu law, which had been shaped more directly by colonial case law and British scholarly intervention than its Muslim counterpart. In these circumstances, the greater emphasis placed on Hindu custom rather than text had constructed Hindu personal law as a system of social practices rather than one based on religious scriptures. As a result, Hindus who sought to use state structures to reform their personal legal system struggled to escape the colonised histories of Indian social development, as Hari Singh Gour's argument at the beginning of this chapter showed. For Gour, law reform was not about correct religious practice but was profoundly secular, using the courts and legislatures to achieve 'social modernisation' in line with the universal framework of progress that underpinned the colonial administration's own 'civilising' claims.

Rather than reflecting an inherent 'religiosity' among Indian Muslims or 'liberalism' among Hindus, these calls for reform were different responses to the same overarching processes of colonial legal administration and, in the wake of the 1860s' reforms especially, systemisation. In the context of political devolution, however, the difference between Hindu and Muslim reformers' arguments was to take on much greater political significance, as Hindu representatives often chose to align themselves not only with the apparatus of colonial state power but also with its universalising ideologies of progress. This relationship was not one-sided, however. From around 1916, the scale of the First World War and the cost of India's war effort meant that colonial officials also began to take new interest in using state legal structures to uphold and enforce the operation of Hindu personal law, as the next chapter explores.

2 Financing a new citizenship: the Hindu family, income tax and political representation in late-colonial India

In 1916, Sir William Meyer, then Finance Member of the Government of India, introduced a small but significant change to Indian income tax policy. Income tax had been made permanent in India in the late nineteenth century.[1] Levied on non-agricultural incomes, it was seen as a means to spread the colonial tax burden beyond rural landowners. The Indian Income-tax Act of 1886 had imposed flat-rate charges on annual incomes of Rs. 2,000 or over. The Act divided incomes into four groups, according to source.[2] A person or business that made more than Rs. 500 from a single source had to pay tax on all income over this limit. The amount of tax varied between 4 pies and 5 pies in the rupee across the four different income groups.[3] In 1916, Meyer abolished these fixed rates and adopted a model of graduated taxation, with a sliding scale of charges on incomes from Rs. 5,000 up to Rs. 25,000 (see Table 2.1).[4]

Wartime fiscal pressures had played an important role in encouraging Meyer to make this reform. The Indian economy had been in decent shape when war was declared in Europe in 1914, with officials predicting a surplus of just over £1 million at the end of the fiscal year.[5] The situation soon changed, however, as global trade began to contract,

[1] Income tax was introduced in 1860 as a temporary measure. It was revived several times before becoming a permanent tax in 1886. P. J. Thomas, *The growth of federal finance in India: being a survey of India's public finances from 1833 to 1939* (Madras, 1939), pp. 78–87, 165–167, 239–241.

[2] The four separate categories were 1. salaries, annuities and pensions, 2. company profits, 3. interest on securities, 4. other sources. Income from agriculture was exempted from income tax, one of the chief innovations of the Act. Ibid, p. 243.

[3] Government of India, 'Report of the Indian Taxation Enquiry Committee (1924–25)', Madras, 1926, p. 189.

[4] Under the 1916 Income-tax Act, those with annual incomes of Rs. 5,000–9,999 were taxed at 6 pies in the rupee, those with income of Rs. 10,000–24,999 per annum were charged 9 pies in the rupee and those earning Rs. 25,000 and more paid 1 anna. Telegram from India Finance Department to Secretary of State for India, 29 January 1916 and Secretary of State's reply 1 February 1916. NAI, Finance Dept, Accounts, Proceedings A, Nos. 211–222, April 1916.

[5] Note by W. S. Meyer, 6 October 1916, NAI, Sep. Rev A, April 1917, Nos. 66–74.

Table 2.1 *Rates of income tax under the Income-tax Act, 1916*

Grades of income in rupees	Rate in pies in the rupee
0–5,000	0
5,000–9,999	6
10,000–24,999	9
25,000 +	1 anna

affecting revenue from customs, export and the railway.[6] By the end of 1915, the Government of India reported a deficit of £1.75 million.[7] Though it was the largest source of government revenue, land tax, by its nature, was unable to respond to a sudden shift in government spending.[8] A bad south-west monsoon in 1915 added to these difficulties and the amount of land revenue collected that year was down £280,000 on expected figures.[9] These events put pressure on the colonial administration's day-to-day expenditure, let alone the cost of the imperial war effort.

Meyer's reform of the Income-tax Act was one of several steps taken by the Government of India to remedy this financial situation. Over the course of 1916, the government raised the import tariff for the first time since 1894, as well as duties on iron and steel goods and levies on materials used for railway construction. Export duties on rice and tea were introduced along with a range of special duties on products that included cigars and cigarettes, spirits and sugar.[10] By the end of the year, the government reported that it had raised £750,000 more than the £3.6 million Meyer had initially predicted the changes would bring in. The bulk of this additional revenue, £550,000 had come from customs charges, with salt duties contributing £70,000 and the

[6] The value of Indian exports fell from £122 million in 1913–1914 to £87.5 million in 1915–1916, with custom revenue falling from £7.5 million to £5.8 million over the same period. Thomas, *The growth of federal finance in India*, p. 304.

[7] Note by W. S. Meyer, 24 December 1915, NAI, Finance Dept, Accounts, Proceedings A, Nos. 211–222, April 1916.

[8] Land revenue remained the government's largest overall source of income, but, as a proportion of the total tax revenue, it began to dwindle from the 1870s onwards, while sources of taxation connected to the emerging space of the market continued to expand: between 1872 and 1893 the government's tax revenue rose from Rs. 374 million to Rs. 501 million, with non-agricultural taxation, from tariffs, excises and income tax, accounting for more than one third of this increase. B. R. Tomlinson, *The economy of modern India 1860–1970* (Cambridge, 1993), p. 14.

[9] Note by W. S. Meyer, 24 December 1915, NAI, Finance Dept, Accounts Proceedings A, Nos. 211–222, April 1916.

[10] Thomas, *The growth of federal finance*, pp. 304–305.

Table 2.2 *Rates of super tax under the Super-tax Act, 1917*

Grades of income in rupees	Rate in pies in the rupee
50,000–99,999	1 anna
100,000–149,999	1.5 annas
150,000–199,000	2 annas
200,000–249,999	2.5 annas
250,000–300,000	3 annas

[1 rupee = 16 annas; 1 anna = 12 pies]
Source: P. J. Thomas, *The growth of federal finance in India: being a survey of India's public finances from 1833 to 1939* (Madras, 1939), p. 305.

remaining £130,000 coming from income tax.[11] A year later, the new Income-tax Act was supplemented by a wartime Super-tax Act. Act VIII of 1917 imposed additional charges on non-agricultural incomes in excess of Rs. 50,000 (see Table 2.2). Setting out a sliding scale of charges, ranging from 1 to 3 annas on these high-end incomes, it was, in many ways, an extension of Meyer's 1916 income tax reforms. These changes had a dramatic impact on income tax collection rates: in 1914–1915 the government had raised Rs. 3.05 crores in income tax. By 1918 this figure had risen to Rs. 9.5 crores, including super tax collections.[12] This was small in relation to overall government income law but showed the flexibility, and thus political utility, of income tax.

This shift from a fixed-rate to a scaled system of income taxation was to have an enormous impact on both the operation of Hindu personal law and its relationship with colonial state structures. Ritu Birla has shown how colonial economic legislation, such as the Indian Income-tax Act, drew the Hindu joint family into the legal realm of the emerging 'global market' while simultaneously marking out this structure as one that was 'corrupted' by cultural peculiarities.[13] Within this legal framework the Hindu family firm was codified under the specific legal title of the 'Hindu undivided family' (HUF) rather than the term Hindu joint family which was used in the colonial courts. While the jointness of a joint stock company was to be based on the universal principle of contract, colonial market law held the jointness of the HUF to rest on India-specific religious custom. Finance officials used this argument to tax the Hindu joint family as a single unit, the individual shares within which could not

[11] Note by W. S. Meyer, 30 December 1916, NAI, Finance Dept, Accounts Proceedings A May 1917, Nos. 183–188.
[12] Thomas, *The growth of federal finance in India*, p. 308.
[13] Birla, *Stages of capital*.

be recognised as they could within a company.[14] Such policies did much to strengthen the particular links between state structures and Hindu law that were explored in the previous chapter – the framework of colonial market law was premised on state protection of Hindu custom, albeit as a less developed and inferior set of practices in relation to 'universal' (though in practice western) property law.

The material discussed in this chapter confirms Birla's argument about the way in which colonial market law cast Hindu-Indian 'capitalists' as culturally marked as compared with other trading units, but it argues that the First World War, and the shift from a flat rate to graduated tax system more specifically, marked a critical turning point and the beginning of a new phase in the processes Birla observes. It shows how Meyer's 1916 reform of the Income-tax Act raised questions about the nature of the Hindu family firm in relation to other non-Hindu trading corporations, but also about the specific nature and composition of the HUF as defined by colonial tax officials. Tracing the development of these debates through the early 1920s, the chapter shows how changes in the economy of the late-colonial state provided colonial officials with financial incentives to rationalise Hindu family property law as a clear and nationally uniform legal system.

Late-nineteenth-century finance legislation had established the HUF as a trading structure that was similar to, and yet different from, the joint stock company but had done little to define the composition or the structure of the HUF in more positive terms. The 1882 Indian Companies Act had set out that a Hindu family could not register as a joint stock company, a position that was consolidated further by the 1886 Indian Income-tax Act, which set out two categories of taxpayers, 'companies' and 'persons', with the HUF listed explicitly as an example of the latter. This wording assumed the HUF to be a clearly defined, all-India-applicable entity, but, as the previous chapter explored, though Hindu men were understood to hold family property jointly, the precise nature of this relationship varied significantly across the subcontinent, depending on the school of Hindu law adhered to and the way in which it was interpreted by the regional High Court. The 1886 Income-tax Act offered no guidance as to the relationship between the term Hindu undivided family used in its clauses and the way in which the Hindu joint family had been understood in the colonial courts. Indeed, the disconnect in this terminology appears to have provided little cause for concern within the colonial administration since income tax collection

[14] Ibid, Chapters 1 and 2.

was managed on a provincial basis. This began to change following Meyer's decision to move to a graduated taxation system.

As this chapter explores, the stepped-rate system required colonial finance officers to establish precisely how much each taxpayer earned a year from all their various sources of income, wherever in the country they came from. At the same time, the rapid rise in income tax collection levels meant that the central government became increasingly interested in controlling this source of revenue. The expansion of centralised income tax regulation forced colonial officers to address the relationship between regionally diverse Hindu personal law and the singular notion of the HUF used in income tax legislation. A HUF might be different from a company, but did this term signify a Dayabhaga model of joint family property rights, or a Mitakshara one? This chapter looks at how the move to stepped income taxation and the subsequent emergence of an all-India income tax system gave the colonial administration powerful incentives to establish an all-India definition of the Hindu undivided family and the laws governing its control over property. It argues that the fiscal and political framework arising from these debates played a critical role in shaping the colonial administration's later decision, in 1941, to draw up a single, all-India Hindu Code Bill.

At the same time, colonial officials were not able to pursue this financial agenda unchecked. Political devolution under the 1919 Government of India Act, in many ways a reward for Indians' financial contributions to the imperial war effort, gave a wider selection of Indians, many of whom were income tax payers, new legislative influence. Indeed, creating new government departments and legislative assemblies, the 1919 Act institutionalised the higher levels of wartime spending and the colonial administration's dependence on revenue such as income tax. The political reforms therefore placed further burdens on the Indian income tax-paying communities but also made the colonial administration more dependent on their cooperation and thus more attentive to their demands. The final sections of this chapter show that, as the object of particular government concern and attention, Hindu taxpayers found themselves in a particularly strong negotiating position. Hindu legislators did not simply oppose the administration's attempt to tax the HUF at a higher level than other taxpayers. The political importance of the income tax-paying community meant that Hindu legislators had much to gain by retaining their high tax-paying status and using this to bargain for other financial benefits. By 1922, the colonial administration and Hindu legislators had established a mutual interest in defining and rationalising Hindu family law in ways that satisfied and reflected their different, but overlapping, economic and political concerns.

Monitoring taxpayers: the emergence of an all-India income tax system

Meyer had presented the move from a fixed rate to a graduated mode of assessing income tax as a relatively minor legal reform, which could be achieved through an amendment to the existing Income-tax Act. As soon as the change was implemented, however, finance officials began to complain that the existing tax infrastructure was inadequate to cope with the demands of a graduated system. Though income tax legislation was dealt with at the all-India level, collecting it was handled entirely by provincial governments and administrations. Up until the First World War, income tax collection was confined largely to the main Presidency towns only, plus Rangoon and Karachi.[15] Of these only the governments of Bombay and the Bengal Presidency had established a separate office for income tax collection in their provincial administrations, a sign of the relatively minor regard in which the tax was held. In Madras and other states, collection of income tax was managed through the land revenue department, by sub-collectors and joint magistrates. Collection procedures and rules for finance officers also varied from region to region, as reflected in the various income tax manuals published in the late nineteenth and early twentieth centuries.[16] This local diversity was not seen as a problem when the income tax was levied as a flat-rate charge on one specific source of revenue, but the scaled taxation system required collectors to establish exactly how much income an individual acquired each year, in order to make sure that he or she was paying the correct rate of tax.[17] This growing focus on the 'total income' of individual taxpayers sparked what was to become a major overhaul, and the increasing centralisation, of the existing income tax system, with significant consequences for specific tax-paying groups.

[15] Note by W. S. Meyer, 5 September 1916, NAI, Finance Dept, Sep. Rev A, April 1917, Nos. 66–74.

[16] W. H. Grimley, *An income tax manual: being Act II of 1886, with notes* (Calcutta, 1886); *United Provinces income tax manual* (Allahabad, 1911); *An income tax manual, being Act II of 1886, with the rulings and orders issued by the Government of India and the Government of Bombay* (Bombay, 1912).

[17] This growing focus on an individual's personal income was felt within taxation systems outside India also and was a point of much heated debate in Europe and the United States, see E. A. Seligman, *The income tax: a study of the history, theory and practice of income taxation at home and abroad* (New York, London, 1911); B. E. V. Sabine, *A history of income tax* (London, 1966), pp. 154–155; Y. Kotsonis, '"Face-to-face": the state, the individual and the citizen in Russian Taxation, 1863–1917', *Slavic Review*, 63, 2 (Summer 2004), pp. 221–246.

Concerns about the operation of the reformed income tax system were first flagged by officials in the Bombay Presidency, the province with the most developed income tax infrastructure. In April 1916, G. A. Thomas of the Bombay Government's Revenue Department wrote to central government officials with details of potential tax-dodging loopholes created by Meyer's recent reforms. He explained:

> In Bombay at the present moment there are a large number of Indian business firms with branches at mofussil stations, such as Broach, Surat, Ahmedabad and other places upcountry. With some of these firms the number of upcountry branches is fifty or more, some of which do quite small business. As long as the rate of income tax for income above Rs. 2,000 was uniform, the firm was assessed for the tax due for the profits of its branches at its headquarters in Bombay, and there was no temptation to managers to escape payment. Now, however, with the tax graduated according to income, it is probable that unscrupulous traders will endeavour to show the branches upcountry under different names from their own, so as to bring the profits of those branches in the lower grade and make them liable to a smaller rate of income tax than they would have had to pay had the profits been shown in lump with those of the principal firm. It is clear therefore that very close vigilance will be necessary on the part of the head of the [Bombay] office if the heavy loss of revenue due to proceedings of this sort is to be avoided.[18]

While Meyer had removed the flat rates set by the 1886 Act, the 1916 amendment had not altered the earlier rules relating to tax payments from different sources of income. His wartime reforms had applied slightly different scales of payment to the existing four categories of recognised income: i. salaries, annuities and pensions, ii. company profits, iii. interest on securities and iv. other sources.[19] Any income that could be classified under parts ii and iii of the Act, that is company profits and interest on securities, was to be automatically taxed at source at the highest rate of tax set under the new terms, 1 anna a rupee.[20] But if an individual share or security holder had a personal income level that was below Rs. 25,000 a year (the highest tax band, at which an individual paid 1 anna per rupee of tax on their income) and was thus eligible for a lower rate of tax, he or she could apply for a rebate to cover the difference between the two. For example, a shareholder with an aggregate income of Rs. 5,500 was eligible for an abatement from 1 anna to 6 pies on his share of the company profits.[21]

[18] G. A. Thomas, to Government of India, Finance Department, 25 April 1916, IOR, Z/P/1325.
[19] Thomas, *The growth of federal finance in India*, p. 243.
[20] See Table 2.1 and Telegram from India Finance Department to Secretary of State for India, 29 January 1916, NAI, Finance Dept, Accounts, Proceedings A, Nos. 211–222, April 1916.
[21] Ibid.

Journalists and Indian commentators had praised the just and equitable nature of the rebate policy.[22] But these decisions were also designed to secure the maximum possible amount of revenue for the administration: a taxpayer had to make the initial payment on their company or securities profits in full, and could only apply for the rebate retroactively. Bombay officials could see the merits of this approach but, they argued, it would also mean a vast rise in the number of rebates claimed and thus the amount of paperwork tax officials would be expected to handle under the reforms. 'With the experience already gained in the working of the amended Act,' G. A. Thomas explained, 'it is clear that the applications for refunds will be very numerous indeed, and if the arrangements for granting them are to work smoothly, it will be necessary that this branch of the office should be under careful and efficient control.'[23]

Government of India officials responded to Thomas's letter by creating a new position – Assistant Collector of Income Tax – in the Bombay Presidency.[24] Significantly, given the highly regionalised working of income tax collection hitherto, central officials also circulated the rules to deal with rebate claims recently drawn up by Bombay Presidency officials to other provincial governments, with the suggestion that they form the basis of a national approach to the issue. At the same time, the Government of India was keen to stress that this was a recommendation only, and emphasised the necessity of making modifications to these rules, 'as local conditions may require'.[25] Yet, even so, the move to a stepped system of taxation had set in motion a shift in tax collection practices, from a focus on income source to a concern with monitoring taxpayers' total income, wherever in the country it might have come from.

Unique or generic? The status of the Hindu undivided family in an emerging all-India income tax policy

The operation of tax rebates and calculation of a taxpayer's total income became more pressing questions with the introduction in early 1917 of the Super-tax Bill, which set out the tax rates for those with

[22] *Rast Goftar*, 5 March 1916 and *Indu Prakash*, 3 March 1916, L/R/5/171 IOR; *Kerala Patrika*, 4 March 1916 and *Manorama*, 4 March 1916, L/R/5/121 IOR.

[23] G. A. Thomas, to Government of India, Finance Department, 25 April 1916, IOR, Z/P/1325.

[24] Letter from E. Burdon, Under Secretary to the Government of India, Finance Department, to the Government of Bombay, 15 June 1916, IOR, Z/P/1325.

[25] Letter from A. A. L. Parsons, Under Secretary to the Government of India to all local governments and administrations (except Bombay and Bengal), 19 October 1916, IOR Z/P/1325.

non-agricultural incomes over Rs. 50,000 a year. Officers were mindful of Bombay's warnings about rebate applications under the new graduated system, but they lacked both the resources and the willpower to overhaul or dramatically build up tax infrastructure so as to better assess and process these claims. Seeking to secure tax revenue, while also keeping rebate claims to a minimum, the Government of India decided to levy super tax on a company's earnings only once annual profits had been divided among shareholders, not before. Thus, rather than taxing the company as a single entity and then inviting shareholders to reclaim the difference between the company's rate of tax and their own, a shareholder would simply declare their own share of the company's profits as part of his or her individual, total income for the year. In establishing this alternative system, the Super-tax Bill made an important departure from the Income-tax Act. The Income-tax Act differentiated between 'companies' and 'persons', with Hindu undivided families and firms (trading outfits that were not registered under the Companies Act) included in this second category. The Super-tax Bill, meanwhile, made no clear reference to this divide. Instead, it set out three sets of procedures for the ways in which companies, firms and HUFs were to be assessed for super tax – all of which related to this two-fold process of dividing income first and then taxing 'shareholder' and 'residual' profits separately. This structure seemed to imply that it was the individual (as a shareholder or member of a firm or HUF) who was the primary object of super tax policy, with the various trading collectives taking a secondary role.

The select committee, comprising official (i.e. government) and non-official (elected) members of the central legislative council, to which the Super-tax Bill was referred, spent much time discussing the proposal to allow division of profits before taxation. Some committee members argued that the Bill encouraged companies and other trading outfits to operate in self-destructive ways by dividing all their profits among many low-income shareholders, rather than building up a large capital reserve for future growth and expansion. To answer this, Meyer proposed to exempt 10 per cent of a company's, firm's or HUF's non-divided capital reserve from super tax.[26] While this solution won favour with other committee members, it did not satisfy the only two Hindu members of the committee (Madan Mohan Malaviya and Sita Nath Ray), who agreed to sign the final report only after appending notes of dissent in which they expressly opposed the two-fold system of levying super tax.

[26] Report of the Select Committee on the Super-tax Bill, 5 March 1917, para. 3. NAI, Finance Department, Sep. Rev A, April 1917, Nos. 66–74.

Malaviya appreciated the committee's aim to bring all companies, firms and HUFs onto an equal footing for the purposes of super tax but argued that its policy of taxing 'divided' and 'reserve' income separately raised unique problems for the Hindu undivided family. Paying out funds to shareholders or members of a firm did not change the nature of the company's or firm's property overall. But, Malaviya argued, this was not true of the Hindu undivided family. According to the law governing a joint Hindu family, he explained, 'what will be *finally allotted* to a member of the family will become his separate property, and the succession to this property may be widely different from what it would be if the income was not so allotted to one member'. If a Hindu family divided its annual profits under the terms proposed by the Super-tax Bill it would have to partition the joint family estate all together. If it didn't partition its estate, the HUF would then have its wealth taxed as a single lump sum. While 10 per cent of this might be tax free, the HUF would still end up paying a higher level of tax on a larger proportion of its income than a firm or company which could much more easily take advantage of the division policy set out in the Bill.[27]

When the committee's revised copy of the Super-tax Bill was submitted to the legislative council a few days later, other Hindu representatives also questioned the rules concerning the HUF. The ensuing debate did much to highlight the considerable ambiguity and uncertainty relating to the HUF's position in colonial income tax law. Sita Nath Ray followed up his note of dissent on the select committee's report by tabling an amendment to the new Bill that would remove the precise wording about allotment of fees to individual members of a HUF, or firm and company, replacing it with a more general statement that 'any income which a person enjoys as a member of a company or of a firm or of a Hindu undivided family . . . is liable to [super] tax'. Wishing to avoid the impression that Indians were divided in their support for the British war effort which the Bill was intended to help fund, he later withdrew this proposal, but warned the administration that the current provisions of the Super-tax Bill relating to Hindu undivided families 'will press very heavily on certain individuals'.[28]

[27] Note of dissent by Madan Mohan Malaviya – italics in original; Sita Nath Ray noted his disapproval of the whole clause dealing with division of company, firm and HUF wealth among members, but did not explain the basis of his objection in the detail provided by Malaviya. They were the only two members of the committee to append dissenting notes to the final report. Ibid.

[28] Proceedings of Indian Legislative Council, 7 March 1917, p. 4. NAI, Finance Department, Sep. Rev A, April 1917, Nos. 66–74.

Many of Ray's Hindu colleagues, however, were not as willing to drop the issue. Rao Bahadur B. N. Sarma, a Hindu lawyer from the Madras Presidency and a prominent member of the Indian National Congress, argued that the current terms of the Bill clearly discriminated against Hindu trading families:

> Supposing an undivided family consisting of four brothers has an annual income of 2 lakhs of rupees. If the family be divided or if their share be defined, each share would be 50,000 rupees and not liable to this super-tax. But if the brothers continue as members of the undivided family, and spend Rs.10,000, then they would be liable to pay assessment on a lakh and 90,000 rupees, on 50,000 rupees at the usual rate and on 40,000 rupees at a higher rate. In the case of an undivided Muhammadan family there would be no hardship, because the assessment would be only on the undivided share of each individual member of it.[29]

He also pointed out the disconnect between financial officials' use of the term HUF, which seemed to describe all Hindu joint families, and the different forms of family property recognised by Hindu jurists. Under the current wording of the Bill, he argued, 'the Dayabhaga family in Bengal, although there is no survivorship among the members, would fall within the definition of an undivided family and be liable to assessment at the higher rate although the family cannot be said to be a corporation strictly'.[30] Sarma acknowledged that this system of classification had been in place since the Income-tax Act had first been passed in 1886, 'but those difficulties [highlighted above] were not greatly felt, so long as the tax was low'. The shift to graduation and, with it, a higher level of tax had greatly exacerbated the difficulties facing the HUF, he argued. In highlighting this situation, Sarma was insistent that the motive driving him was equity and a commitment to religious toleration, not self-interest or religious sentiments: 'I am not here to defend the undivided family system or to argue as to whether it would be wise to encourage division in undivided families; that is not the question before the Council, but the question is, whether we as a legislature should interfere with the usages of the people in an indirect manner and encourage division by making it their interest to do so. My humble submission is that it would not be wise or expedient or proper.'[31]

To eliminate these difficulties, Sarma proposed that the Bill should define a HUF's 'total income' as 'so much of the joint income of such family as would not be liable to assessment under this Act if all the members of the family had been divided on the date of the assessment'. This would mean, Sarma argued, that Hindu families would pay tax on

[29] Ibid. [30] Ibid, p. 5. [31] Ibid.

the same basis as their Muslim counterparts and in a way that reflected more accurately the true legal status of the Dayabhaga Hindu family. This motion was strongly supported by Pandit Malaviya, who explained that Sarma's amendment would adequately resolve the difficulties he highlighted in his earlier note of dissent.[32]

Sarma's proposal won less favour, however, among official members of the government. The Law Member, George Lowndes, conceded that the Hindu family occupied a complex position under Indian tax law, but argued that rather than creating greater equity between the Hindu family and other taxpayers, Sarma's amendment would do the opposite. The undivided Hindu family was particular to India, he argued. While Indian individuals, firms and companies could all be managed under the same tax laws as those used in England, there was no equivalent of the HUF in British society. At the same time, the fact that income and super tax were levied only on non-agricultural income meant that the only Hindu families that were considered to be HUFs for taxation purposes were those which made their wealth from trade, not from agriculture. Though the terms of the 1882 Indian Companies Act had established that such HUFs could not constitute joint stock companies, Lowndes argued that there was little to distinguish them from firms, that is trading partnerships and outfits that were not registered under the Companies Act. 'The dividing line between a firm and a trading family is a very thin one', he maintained. 'Therefore, where you have a family of this sort, the only really fair way of dealing with it is to treat it on the same lines as if it were a firm.'[33] This was precisely the principle on which the Super-tax Bill had been devised, he argued, so that Sarma and Malaviya were mistaken in seeing a difference in the status of the HUF and the firm. He recognised that to divide up the total earnings of a HUF among individual members amounted to a legal partitioning of the joint estate, but he argued that completely dividing a firm's total income between members would have an equally punitive effect on the firm's financial health and long-term estate. Completely dividing up a firm's income as profit for individual partners could allow the partners to escape taxation – if they did not earn much themselves – but it would fundamentally impede the economic growth and prosperity of the firm in the longer term.

Do you think that the firm will divide the whole of their profits merely in order to escape paying super-tax on the residue? I doubt that they will. They are very much wiser people than that. They will say that if they divide and spend they will go on making the smaller income – that follows from the smaller capital – whereas

[32] Ibid, p. 7. [33] Ibid.

if they put aside a sum every year, they will have a larger capital, they will make a larger income, and they will have a larger amount to spend in future years and a larger amount again to put to reserve. Exactly the same line of argument applies to the company.[34]

Stressing the similarity between a HUF, a firm and a company in the new Bill, as well as the government's own desire to treat all three equally, Lowndes explained that he had simply assumed that Hindu families would approach the situation in the same way as their non-Hindu counterparts and chastised Sarma and Malaviya for thinking that members of a HUF might be any less business savvy. Framed in these terms, Lowndes argued, one could see that HUFs, firms and companies all faced incentives to divide up their income under the terms of the Super-tax Bill. But they also all stood to lose in other ways by following this course of action. On this basis, the Law Member suggested that it was not a desire for equity with other taxpayers that motivated Sarma's amendment but a desire to secure undue financial privileges for the HUF.

It seems to me that what both my Hon'ble friends want, in dealing with the Hindu joint-family, is to keep the family undivided, but to give it all the advantages of being partitioned. It is the same with the firm who would say 'we want you to treat us as if we divide the whole of our profit; it is true we do not – we keep a common purse. Why? Because for our purposes it is desirable to do so. It is the same with a company – why tax us? Treat us as if we had divided the whole'. That is an argument you can apply to all of them; but you cannot apply it only to one of them. You cannot apply it the Hindu joint-family and say it does not apply equally to the firm.[35]

Lowndes's accusation of self-interest met with considerable anger among Hindu Council members, and did much to change the terms of the debate. Having originally supported Sarma's proposal, framed in terms of the similarities between firms, companies and HUFs, Malaviya now stressed the unique and peculiar nature of the HUF's jointness. A firm or company's jointness was less absolute than that of the HUF – the former could divide out part of its wealth to members while retaining the collective, whereas any division among members of a HUF required the annulation of its jointness. Under the current terms of the Super-tax Bill, government would be pursuing a policy that compelled a Hindu family to undergo a process of dissolution that did not exist in the case of firms or companies.[36]

[34] Ibid, p. 8. [35] Ibid, pp. 8–9. [36] Ibid, p. 9.

Bhupendra Nath Basu, a lawyer from the Bengal Presidency and former Indian National Congress president, also rejected Lowndes's argument about the similarities between 'an English firm [and] the Hindu joint-family'. Echoing the arguments used by Muslim lawyers in earlier debates about the status of the *waqf*, Basu questioned whether Lowndes was best placed to explain Hindu legal structures to the legislature and reminded his colleagues of past instances in which 'English jurists [who] in dealing with Hindu institutions have often-times fallen into great errors' by seeing false analogies between English and Hindu legal institutions.[37]

Basu followed Malaviya's point, arguing that Lowndes had misunderstood the fundamental difference in the nature of the relationship between the property owners that comprised a HUF and a firm: 'In the case of a business-firm each man has got a definite and separate interest in the firm, and at the end of the year when the accounts of the firm are adjusted, the position of each member as regards the profits is determined . . . But in the case of an unfortunate (or fortunate, whichever way you look at it) Hindu joint-family . . . it is difficult to predicate of any individual member of that family as to what his share is.'

This was a significant departure from Sarma's line of argument. Whereas Sarma had argued that a HUF should be treated like a firm for tax purposes, but was not under the Super-tax Bill, Basu pointed to the unique status of the HUF and criticised the Bill for not recognising and accommodating this adequately. Basu's claims rested on a reading of family jointness as it was set out under Mitakshara law. Thus, though he himself hailed from the region of India that was governed by Dayabhaga law, he did not acknowledge the variant of joint family property rights raised by Sarma. As Basu characterised the HUF:

> The whole family from the old man whose time has come to retire . . . down to the babe at the mother's breast are interested, and when one member dies it is not his sons [that] succeed, but the survivors succeed jointly. Not until the partition comes is each share distinctly separated and allotted to particular individuals.[38]

Lowndes's argument that firms and HUFs shared the same kinds of incentives and deterrents to manage their income under the Super-tax Bill was, according to Basu, severely misguided. Among firms, the division of at least part of the collective income among firm members was part of regular financial operations. In the case of the HUF, such division

[37] In particular, Basu highlighted the way in which colonial jurists had applied English laws relating to widows' property rights in ways that had severely undermined the status and wealth of Hindu widows. Ibid, p. 11.
[38] Ibid, p. 12.

ran counter to the principle that underpinned its estate. The foregrounding of individual property rights, over the structure of the trading collective, in the Super-tax Bill was compatible with the existing structure of firm and company finances, but it fundamentally challenged the basis of HUF property. Though he differed from Sarma in terms of how he envisaged the HUF vis-à-vis the firm, Basu supported his amendment on the grounds that it provided a necessary counterbalance to the disadvantages the very structure of the Super-tax Bill imposed on the HUF.

Basu's claims prompted colonial officials to make their own countermove in the argument about the HUF's tax status. Turning away from Lowndes's argument that the HUF and firm were comparable financial structures, J. B. Brunyate, of the Government of India's Finance Department, argued that the amendment should be opposed because the Hindu trading firm already enjoyed key financial advantages that other trading bodies were denied. While the joint structure of the HUF might 'operate as a disadvantage' in terms of discouraging division of wealth among family members, 'a Hindu family has, on the other hand, a very special advantage ... when you tax a Hindu family as a whole, you have to treat its expenses, its domestic and purely private expenses, its houses, its motor-cars, its food and everything else, even its marriage ceremonies, as if they were business expenses. So that ... if [the HUF] spends its whole income from year to year as many individuals do, it will not be liable to super-tax at all under this Bill.' The 'general idea' of Sarma's amendment, as Brunyate identified it, 'is that, as an individual is exempted in respect of 50,000 rupees of his income, so if a number of individuals are compelled to be dealt with together as a joint-family, it would be right to exempt as many times 50,000 rupees as there are members of the family'. This would, Brunyate argued, bestow further privilege on an already highly advantaged unit, a view with which Meyer strongly agreed.[39]

As the legislature moved to a vote on his amendment, Sarma sought, once again, to explain and defend his proposal. He was particularly anxious to challenge the insinuations and outright accusations that his main goal was tax avoidance. He shared the same aim as government, he argued, to ensure that Hindu joint families, firms and companies were all treated in the same way under the Bill: 'We ask, My Lord, for no favour; we ask for no discrimination in our favour ... Our position is that whatever it may be, whether advantageous or disadvantageous, [Hindu joint families] should be put on exactly the same footing as others.' The

[39] Ibid, pp. 13–14.

key issue at stake, he reiterated, was ‘whether these Hindu families have been treated on the same footing as a firm or as an undivided Muhammadan family’.[40]

Though Lowndes thought that the Bill was equitable, Sarma disagreed. To support his case, he returned to his example of a four-member firm or Muslim family that earned 2 lakh rupees in a year, arguing that it could divide this profit into Rs. 50,000 portions, all of which could escape income tax. Members could then use only Rs. 10,000 themselves and reinvest the remaining Rs. 40,000 into the firm as capital, not simply as ‘residual’ profits – a transaction that would not be taxed under the Super-tax Bill. Again drawing attention to the different schools of Hindu law, Sarma argued that the very structure of property rights under Mitakshara law made it impossible for members of a HUF to do this. Any wealth that was definitely allocated to a single member of a coparcenary ceased to be joint family property but became his own estate, governed by succession rather than survivorship. This was the situation that his proposal sought to avoid. Permitting members of a HUF to recognise individual members’ claims to the estate, without having to dissolve it, Sarma argued that his amendment would make the HUF, the firm and the company completely parallel for the purposes of super tax.[41]

In the end, the council voted against Sarma’s suggestion and passed the Super-tax Bill unamended. Though many Hindu representatives had supported Sarma’s proposal, the debate had exposed the considerable differences in the ways in which Hindus, as well as colonial officials, understood the HUF to operate. Some of these differences seemed to stem from the very structure of the Income and Super-tax Acts. While Hindu personal law was administered by the various High Courts on a regional basis, the centralised tax Acts presumed the Hindu undivided family to be a clearly defined structure that was uniformly applicable to Hindus throughout India. From Sarma’s perspective, this disconnect between personal law and tax law was one of the reasons why the latter had to be reformed. Other legislators, however, preferred to endorse the assumption at the heart of the Super-tax Act that the Mitakshara coparcenary formed the basis for Hindu joint families throughout India so as to argue that the HUF was completely unlike a firm and thus should be taxed differently.

In spite of the differences between Hindu legislators, the outcome of the vote was determined by the composition of the legislature and its place within the constitutional structure of colonial rule. The 1909

[40] Ibid, p. 15. [41] Ibid.

Government of India Act had given non-official Indian representatives the majority in provincial legislatures, though not at the centre where the executive remained dominant.[42] Hindu representatives could voice their concern and bring amendments, but had little power to ensure that these were passed.

Opposition to the Government of India's new tax policy was not isolated to the legislature. By 1917, many of the Indian-owned newspapers, particularly those owned and edited by members of the commercial and urban-based professional communities, were also beginning to criticise the new tax measures. While some newspapers had responded quite positively to Meyer's graduated tax system when it was introduced, many expressed the view that the colonial state already exerted undue financial pressure on its Indian subjects.[43] A number of Indian-owned newspapers carried angry responses to accusations made by the British newspaper *The Statesman* on the eve of Meyer's move to graduated income tax, that Indian taxpayers were shirking their duty and allowing the European community in India to carry the full burden of taxation.[44]

Reports of tax officials' application of the new Income- and Super-tax Acts further challenged *The Statesman*'s view that Indian merchants and professionals were unaffected by or able to avoid colonial tax policy. Indeed, the sheer volume of these stories suggests that the dramatic rise in tax collection rates during the war owed as much to the aggressive attitude of individual tax collectors as to the shift in the ways in which tax levels were calculated. In February 1917, the *Hindu Nesan*, a Madras-based Tamil daily newspaper, under the editorship of T. S. Kothandaram Ayyar, a Brahmin, complained that the divisional sub-collector, James Carlyle Stoddart, was forcing the people of Tiruvarur to pay rates of tax that were 'out of all proportion to income'. The paper described the 'distress' felt by taxpayers who submitted 'properly maintained' accounts, only to be charged by Stoddart with falsifying these documents. Matters had become so bad, the paper suggested, that Stoddart's more senior, divisional colleagues had been

[42] B. D. Metcalf and T. R. Metcalf, *A concise history of modern India* (Cambridge, 2001, 2006 edn.), pp. 160–161.

[43] Away from the specific debates about income tax, the argument that colonial rule was economically oppressive for Indians was made forcefully at this time by Lala Lajpat Rai in his *England's debt to India: a historical narrative of Britain's fiscal policy in India*, which was published in New York in 1917 but was banned in India, sparking much popular outcry.

[44] See, for example, *Dainik Chandrika* (Calcutta), 15 March 1916, IOR L/R/5/43; *Leader* (Allahabad), 11 March 1916, IOR L/R/5/91, *Qaumi Report*, Madras, 29 May 1916, IOR L/R/5/121.

forced to intervene and cancel some of the tax demands issued, 'as the parties to whom it was imposed have not property enough from which it can be realised'.[45]

Other Madras Presidency-based newspapers concurred. The *Indian Patriot*, a Madras, English-language weekly edited by the prominent Hindu journalist and reformer C. Karunakara Menon, lamented 'the arbitrary ways of Income-tax authorities who are resolved to see large incomes and tax them'.

Protests are of no avail; regularly kept accounts are disbelieved. In a large majority of cases, the tax, once levied, probably on the hint of an informer who is often interested in wreaking his vengeance on the merchant he informs against, is permanent . . . The war has affected many a merchant to his detriment, but in the eyes of the Income-tax assessor no change is visible except a change for the better.

There is, the paper argued, 'the same cry everywhere, in the capital city of Madras or in the mufussal town of Nagapatam [sic]', and beyond the Presidency also. 'We must . . . in justice to the Government of Madras, acknowledge that this situation is nothing peculiar to this Presidency. Distant Karachi raises the same howl.'[46]

Over the following year, reports from Sukkur (in Sindh),[47] Sholapur (to the east of the Bombay Presidency)[48] and various areas in Punjab[49] lent support to the *Indian Patriot*'s claim. Newspapers began to demand the government put in place mechanisms that would better protect taxpayers against over-zealous and bullying collectors. A source of particular complaint was the fact that a taxpayer had no real right of appeal against what he or she felt to be an incorrect assessment.[50] Any challenge to an assessment was heard by the finance officer who had made it in the first place, or if not then a senior colleague. A case could pass on to the courts only once these officials had agreed. Many viewed this as unfair, with some newspapers calling on the government to ensure that any

[45] *Hindu Nesan*, 22 February 1917, IOR L/R/5/123.
[46] *Indian Patriot*, 29 January 1917, IOR L/R/5/123.
[47] *Sind Advocate*, 3 January and 6 June 1918, IOR L/R/5/174.
[48] *Dnyan Parkash*, 10 August 1918. Ibid.
[49] The *Tribune*, 8 February 1918, carried a story about the tax collector of Chakwal, in northern Punjab; the Urdu daily *Bulletin* of 22 May 1918 discussed events in Lyallpur; *Paisa Akbar* of 1 August 1918 discussed income tax collectors' treatment of traders at the Dabbi and Anarkali bazaars of Lahore, IOR L/R/5/200.
[50] Newspapers across India carried vast numbers of stories about the lack of a fair appeal process and injustices faced by income tax payers. A few examples are *Sind Advocate* (Sukkur), 3 January 1918 and 6 June 1918; *Kesari* (Poona), 22 January 1918; *Vakil* (Amritsar), 17 July 1918; *Young India* (Bombay), 25 September 1918; *Prapanja Mitran* (Madras), 19 February 1918; *Paisa Akbar* (Lahore), 1 August 1918.

appeal or complaint went straight to an independent member of the judiciary and not a tax official.[51]

Aside from these popular calls for reform, the Government of India faced pressure from within its own ranks to further amend income tax laws. While income tax revenue levels had risen three-fold since the start of the war, the debate about super tax had shown that there were still many difficulties surrounding collection of these taxes, especially in terms of rebate claims. Government officials were very aware that, to be most efficient and raise the maximum revenue yield, tax collectors needed to be able to calculate the 'total income' of an individual taxpayer in order to establish which tax rate to apply. Indeed, discussions of the Super-tax Act had prompted the government to begin work on another, more comprehensive revision of the Income-tax Act that could address many of the same problems.

Introducing this revised Income-tax Act, in early 1918, colonial officials argued that its provisions served 'the interests both of assessees and of Government'.[52] Building on the changes already made under the Super-tax Act, the new Income-tax Act expanded further still the power of local tax collectors to demand information from taxpayers. These changes would make collection processes more streamlined, finance officials argued, and thus prevent the arbitrary practices of which people had complained. Significantly, however, the enhancement of tax collectors' powers was not accompanied by the introduction of judicial review or the right of legal appeal.

When the final draft of the Bill to amend the Income-tax Act was introduced to the central legislature in March 1918, it met with angry responses, both inside and outside the assembly. The professional and merchant-owned Indian press was largely critical of the Bill. *Swadesamitran*, a popular Tamil daily with strong nationalist sympathies, noted that the Bill did much to ratchet up revenue officers' powers without providing any corresponding relief for assessees.[53] While there might be strong popular opposition to this move, it commented: 'There will be no difficulty in passing the Bill in the Legislative Council, as the Government have the majority on their side and those [official] members are bound to

[51] *Belgaum Samachar* (Belgaum), 7 January 1918, *Young India* (Bombay), 18 December 1918, IOR L/R/5/174.

[52] Statement of Objects and Reasons for a Bill to Consolidate and Amend the Law Relating to Income-tax, as drafted on 26 October 1917, NAI, Sep. Finance Department, Rev A., April 1918, Nos. 168–201.

[53] *Swadesamitran* (Madras), 6 March 1918. In 1918 the paper had circulation figures of 5,600 copies a day. IOR L/R/5/125.

vote in favour of the Government whatever may be their own view.'[54] The Bania-owned *Gujarati*, of Bombay City, echoed this, viewing the Bill 'as a measure that tends to increase the burden of our taxation'.[55]

Within the legislature, Sarma and others focused heavily on what they saw as the new Act's failure to amend the existing discrimination facing Hindu families. Sarma proposed an amendment that was almost identical to the one he had moved in the super tax debate: 'Where the assessee is an undivided Hindu family, the tax payable by an undivided Hindu family on the aggregate taxable income of that family, shall be the total of the sums which would be payable by the several members of the family entitled to a share of such income if the family became divided on the 1st April of the year of assessment.'[56]

As before, Sarma argued that this provision was needed on grounds of equity, though rather than comparing the HUF to companies and firms as generic or universal units, Sarma now presented his argument in more specifically Indian terms. Hindus were not the only groups in India to trade on the basis of family networks, he argued. Muslims, Parsis and Christians also did so, but because they were not seen to be 'undivided' by the colonial courts, they could *claim* to divide their family income into individual 'shares' that fell below the Rs. 9,999 minimum tax threshold set by the Act, while continuing to live and trade as a family unit. Hindu families should also be given the option to do this without fully dividing or partitioning, he argued. Highlighting again the difference between the Mitakshara and Dayabhaga schools, he pointed out that in the case of the latter individual shares in the family estate were recognised by the law courts, if not by financial officers.[57]

Unwilling to be drawn into yet another lengthy and complex debate about the somewhat ambiguous status of the HUF under taxation law, government officials refused to accept the amendment, arguing that the legislature had already discussed these issues. They offered instead to circulate Sarma's proposals to local governments for consideration if the opportunity for further amendment arose in the future.[58] Sarma had little option but to accept this offer. The Bill to amend the Income-tax Act was passed at the end of March 1918, the passage of the final draft showing clearly both the administration's financial aims and the limits of Indian representatives' ability to influence these in any meaningful way.

[54] Ibid. A. Rangaswami Ayyangar, the then Brahmin editor of the paper, was later elected to the central legislature in 1923 as a member of the Swaraj party.

[55] *Gujarati*, 10 March 1918, IOR L/R/5/174.

[56] *Gazette of India* (Part VI), 30 March 1918, NAI, Finance Department, Sep. Rev A, June 1918, No. 321.

[57] Ibid. [58] Sir George Lowndes's reply to Sarma. Ibid.

Income tax and the 1919 Government of India Act

While the administration did not acquiesce to popular and legislators' demands to reform the 1918 Income-tax Act, in the longer term, financial officers were highly aware that the expanding wartime tax burden could trigger widespread social unrest. One of the ways in which the government had persuaded Indians to accept the Super-tax Act had been to argue that doing so would help the colonial administration to negotiate constitutional reform and greater political autonomy after the war.[59] In August 1917, only a few months after the passage of the Super-tax Act, Secretary of State Edwin Montagu announced the British Government's commitment to 'increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire'.[60]

The prominent role played by mercantile and professional communities in financing the Indian war effort was recognised in the 1919 Government of India Act that was passed subsequently, most notably in the expansion of the Indian franchise on the basis of property and literary qualifications. Along with franchise reforms, the new constitution set out a much-expanded structure of diarchic government, under which issues of day-to-day governance, including the operation of public works and nation-building programmes, were 'transferred' to provincial councils, which could be held to account by a largely Indian legislature. At the central level the Act created a bicameral legislature with greater executive power. Europeans would continue to dominate the Viceroy's Executive Council, but elected Indian representatives now comprised 70 per cent of the lower house, the Central Legislative Assembly, and held the slightest of majorities (thirty-three compared with twenty-seven) in the upper house, the Council of State.[61]

The new constitution stripped the administration of its dominance over the activities of the central legislature. It also strengthened the financial foundations of government, as the expansion of Indian

[59] C. H. A. Hill assured his colleagues in the Viceroy's executive council that 'Indian politicians will be (indeed are) at present prepared to recognise' that any 'radical changes in the administration in India' would take place in the future only with the 'good will of other parts of the Empire, [which] will be influenced by the attitude held by those parts towards India's share in the war'. Note by C. H. A. Hill, 4 October 1916, NAI, Finance Department, Sep. Rev A, April 1917, Nos. 66–74.

[60] J. Brown, *Modern India: the origins of an Asian Democracy* (Delhi, 1994), p. 204.

[61] Thirty of the thirty-three elected seats in the Council of State were 'general' seats and three were reserved for the special constituencies: landholders, university and commerce. James Chiriyankandath, '"Democracy" under the Raj', pp. 60–61.

representation helped to formalise, and also advance, the relationship between the state and the constituency of taxpayers and financiers that had been greatly expanded during the war. Strengthening this relationship was certainly necessary, as the 1919 Act did much to institutionalise the administration's wartime levels of spending: the administration needed to cover the immediate costs generated by the introduction of new layers of government and the expansion of existing administrative structures. But the new constitution also pledged the state to greater expenditure in the long term, with provincial councils eager to expand the areas of government, including education, health and agriculture, now under their control. Designed as a means of managing India's move towards dominion status within the empire, the 1919 Government of India Act committed the colonial administration to regular constitutional reviews, with the probability of further political devolution in the future. As a result, the financial reforms that accompanied the 1919 Government of India Act were just as important, if not more so, for the development of a new, responsive state structure as the expansion of Indian representation itself.

The Meston Settlement, the financial framework underpinning the new constitution, did much to expose the impact of the First World War on government revenue policy.[62] The 1919 Act dramatically expanded the range of activities for which provincial administrations now had responsibility. To cover these new costs, the Meston Settlement granted provincial councils control over the land revenue collected in their province, as well as revenue from liquor excise, irrigation receipts, from the forestry department, from general and judicial stamps, and from registration fees. The central government was given control over revenue from customs, income tax, salt, opium, the railways, posts and telegraphs. Because land tax constituted the administration's largest single revenue head, the Settlement also set out a system of provincial contributions that was designed to supplement the central government for its loss of land revenue under the new scheme. The size of the contribution varied from province to province, depending on how much its budget had increased under the new financial arrangements.[63]

[62] The settlement was named after James Meston, who took over from Meyer as Finance Member in 1918.

[63] The provinces had made financial contributions to the centre under the previous financial structure but these were enhanced by the Meston Settlement. Neil Charlesworth, 'The problem of government finance in British India: taxation, borrowing and the allocation of resources in the inter-war period', *Modern Asian Studies*, 19, 2 (1985), pp. 521–548, 535.

Table 2.3 *Government of India's income, 1914–1921*

Revenue heads	(In crores of rupees, i.e. Rs. 100,000)		
	1914–1915	1917–1918	1920–1921
Land revenue	31.8	32.4	32.0
Provincial rates	.06	.03	.04
Income tax	3.05	9.5	22.2
Customs	9.4	16.5	31.9
Salt (net)	5.4	7.7	5.8
Opium (net)	1.5	2.9	2.3
Excise	13.2	15.1	20.4
Railways (net)	3.3	14.9	5.6

Source: P. J. Thomas, *The growth of federal finance in India: being a survey of India's public finances from 1833 to 1939* (Madras, 1939), p. 306.

The Settlement was very much framed in terms of pre-war revenue ideology. By 1919, land tax was still the largest single source of government revenue, but the war had demonstrated that it was one of the least expansive of the official revenue heads. During this time, land revenue collection had remained virtually static, increasing marginally from 31.8 crores in 1914–1915 to 32.4 crores three years later, while income tax collections had more than tripled in the same period (see Table 2.3).[64] Provincial officials were acutely aware of this situation. Arguing that the Settlement had been drawn up on perverse logic, the provincial governments demanded that they be given a share of income tax specifically. The operation of the Settlement reinforced their arguments. Provincial governments showed signs of being unable to meet their budgets almost as soon as the new financial arrangement was inaugurated. Bengal was quickly exempted from making central payments, and the Government of India was later forced to relieve several other regional governments from this financial obligation.[65] It was not that the provincial governments had failed to raise enough of their funds; in all cases provincial budgetary income exceeded projected figures. What Meston had underestimated was the expenditure rates – the cost of providing the public services and nation-building programmes devolved to the provinces under the 1919 Government of India Act was far higher than had been imagined.[66]

[64] Thomas, *The growth of federal finance in India*, p. 306.
[65] Ibid, pp. 336, 342–351; Charlesworth, 'The problem of government finance in British India', pp. 537–540.
[66] Ibid, p. 538.

It was not only the provinces that struggled under the new financial framework. The central government also faced unexpected financial problems. A surge in Indian exports in the immediate aftermath of the war gave officials cause for optimism: in 1919 export levels exceeded import rates by £127 million.[67] But this boom did not last long. Technological and industrial developments during the war greatly diminished the international demand for the raw materials in which India was so rich.[68] As a result, the balance of trade turned rapidly against India and in 1920 import levels exceeded exports by £21 million. As well as affecting customs revenue, and to the great alarm of the Government of India, this had important knock-on effects for railway revenue, which plummeted between 1921 and 1922.[69] Under the Meston Settlement, the railways had been seen as one of the key sources of revenue that would replace the central government's share of land tax. Matters were not helped by poor monsoon and frontier expenditure in the same year.[70] Finally, payment of home charges became a severe financial burden following a fall in the value of the rupee, a crisis that was in fact triggered by India's strong levels of trade during the war.[71] As one of the fastest growing sources of revenue under central government control, officials hoped that further reform of income tax legislation might be one way to help secure the financial stability of the new constitution.

In 1920, as preparations were under way for the first round of elections under the new constitution, central government officials put forward plans to revise the Super-tax Act. Though the Act had brought in considerable revenue, by the end of 1918, officials were beginning to argue that collection levels were not as high as they had expected. The real problem lay, they explained, in the fact that the Act taxed only the undivided profits of a company. While the government had defended this policy in 1917 on the grounds of minimising rebate paperwork, officials now reported that companies were distributing almost all of their income

[67] Thomas, *The growth of federal finance in India*, p. 335.

[68] For example the development of more sophisticated chemical technology and the creation of synthetic dyes replaced the need for indigo, which, having represented almost 8 per cent of Indian exports in 1870–1871 and 2 per cent in 1900–1901, shrank to nothing after the First World War. Tomlinson, *The economy of modern India*, p. 52.

[69] Thomas, *The growth of federal finance in India*, pp. 337–339.

[70] Ibid, p. 335.

[71] High levels of export during the war had a knock-on effect for currency availability. Currency notes were issued against unrealisable paper credits in London. This flood of money into the Indian economy served to drive up prices within India, generating enormous demand for silver, the value of which also sky-rocketed as a result. By 1918 the rupee was on the verge of being declared inconvertible, a situation that was avoided thanks to the American Pitman Act. Ibid, pp. 306–307.

among shareholders, thereby reducing their tax payments while also stymieing their own financial growth and development. It was agreed that this loophole needed to be closed as soon as possible.[72] The accounts submitted under the Companies Act meant that the government possessed clear evidence of the way in which companies were distributing a significant share of their profits in order to avoid super tax charges.[73] Returns for 1917 showed that the number of HUFs which had paid super tax in this year was considerably smaller than the number of firms or companies. Lowndes had in fact predicted this in the debate before the Act was passed. Arguing that Sarma and Malaviya were overreacting in their predictions about the impact of a tax which was focused primarily on companies, he conjectured: 'I doubt if . . . there will be very many Hindu families who will be taxable at all.'[74] A year later, as they looked over collection levels, finance officials seemed to forget this statement entirely.

It was against this backdrop that the Government of India had asked local officials to consider Sarma's proposed amendment to the 1918 Income-tax Act. Few provincial officers supported his plan. Mr A. W. Botham, Second Secretary to the Chief Commissioner of Assam, expressed offence at Sarma's proposals, which he saw as greedy and self-serving. The joint nature of the Hindu family provided Hindu merchants with financial support and relief that were not available to Muslim and British traders, he complained. Hindus should be content with this, he argued, rather than push for reforms that in providing them with 'comparative immunity from taxation . . . would be detrimental to the State and inequitable to members of other communities'.[75]

A number of the officials questioned by the Government of India opposed the proposals on the ground that they went against the principles of Hindu law, using precisely the arguments that Sarma and Malaviya had made to demonstrate their claim that the HUF could not, at present, avail itself of the same financial options as other kinds of firms and companies. The main characteristic of the Hindu family, William Hailey, Chief Commissioner of Delhi, argued, was that individual shares were not clearly marked out until the family was partitioned so that it would be legally impossible to define family members' 'shares' in a

[72] Note by A. A. L. Parsons, 26 October 1918, NAI, Finance Department, Sep. Rev A., June 1920, Nos. 88–95.
[73] Reports from local governments of the working of the Super-tax Act in 1917–18, Ibid.
[74] LCD, 7 March 1917, NAI, Finance Department, Sep. Rev A., April 1917, Nos. 66–74.
[75] Mr A. W. Botham, Second Secretary to the Chief Commissioner of Assam, 3 January 1919, NAI, Finance Department, Sep. Rev A., August 1920, Nos. 133–145.

HUF estate.[76] A. C. Chatterji, of the UP government, wondered who would be included when establishing these 'shares'. Ambiguity about the HUF's status as a family structure and/or firm made it hard to establish whether the membership of a Hindu firm could include not only those actively involved in trade but their wider kinship network. Chatterji explained: 'Under [Hindu law] a male child, the moment he is born, is entitled to a share in the family property.' Did this mean that he would also be given a 'stake' in the Hindu family firm if its membership were registered? Chatterji argued that Sarma's proposals would create 'endless opportunities of evasion of tax', which subjects would undoubtedly exploit: 'Shares could and would be assigned to children in order to lower rates', he insisted.[77]

It was the potential threat to revenue yield, at a moment when the Government of India was already concerned about possible super tax evasion, that was really at the heart of official opposition to Sarma's proposals. M. R. James Donald, Finance Secretary to the Government of Bengal, reported to central officials that almost all European firms in his province had succeeded in avoiding super tax through distributing profits, before going on to highlight the 'noticeable fact that not a single Hindu undivided family has been assessed to super tax in Calcutta' even before Sarma's proposed amendment.[78] J. L. Rieu, Finance Secretary to the Government of Bombay, stated his view that HUFs were using their ability to claim family expenditure as non-taxable outgoings to wipe out their tax debt in a similar way as companies with their shareholders. The Hindu family's claim to maintenance should be more clearly defined and, by implication, limited by the Act, he argued. He also called for new rules to make HUF book-keeping more transparent so that tax collectors could check it against expenditure claims more easily.[79] As this comment shows, this reaction was based more on prejudice than firm fact about HUF financial behaviour. The division of profits to shareholders was shown clearly in the accounts that companies had to submit under the India Company Act. What was troubling local finance officers was their inability to monitor the transactions of the HUF – was it really a firm, within which individuals could pool or distribute their money, or was it a more unique family structure that could legitimately claim domestic expenditure as non-taxable outgoings?

[76] William Hailey, 6 June 1918. Ibid. [77] Mr A. C. Chatterji, 22 November 1918. Ibid.

[78] Letter from M. R. James Donald, Government of Bengal, to Government of India, Finance Dept, 30 November 1917, NAI, Finance Department, Sep. Rev B., November 1918, Nos. 176–200.

[79] Letter from J. L. Rieu, Government of Bombay, 6 March 1918. Ibid.

These tensions rose to the fore when the Government of India presented legislators with a Bill to revise the Super-tax Act in February 1920. The Bill made a number of important changes to the existing Act. First, it established a new category of taxpayer in the form of the 'registered firm'. This effectively allowed finance officers to monitor more closely the financial activities of smaller organisations that were not registered under the Company Act. To 'register', a firm needed to draw up and submit to the local tax collector 'an instrument of partnership specifying the individual shares of the partners of which the prescribed particulars have been registered'.[80] Second, the amendment Bill abolished the practice of imposing super tax on the undivided income of a company, firm or HUF. This brought the operation of super tax into line with that of income tax: tax was collected according to the total income of the company or trading body as a whole, with individuals permitted to claim rebates to cover the difference between this and their personal rate. This privilege was no longer reserved for company shareholders only – members of a 'registered firm' were also allowed to put in a claim. The confusion surrounding shares within a HUF meant that Hindu family firms were not allowed to put in such a claim.

As such, the new Bill marked a turn away from the administration's earlier argument that a company, firm and HUF were all broadly comparable for the purposes of super taxation. This policy shift was also reflected in the decision to adopt two different rate schedules. Under the amending Act all companies and registered firms were to be charged at the flat rate of one anna in the rupee, while the HUF, non-registered firms and all other persons were to be assessed against a graded rates system, that began at 1 anna, rising to 3 annas in the rupee.[81]

Hindu legislators responded to this news with outrage. Sarma accused the government of betrayal: he had asked officials to consider the hardships facing the HUF under existing tax legislation, yet, rather than seek to remove these difficulties, 'to the regret of Hindu joint families, we find that the Hon'ble the Finance Member chooses to go further and make their position more intolerable than it has been under the previous [Super-tax] Act'.[82] Government officials had already shown reluctance to rehearse the discussion about the status of the HUF under super- and income tax law when the matter had arisen during the debate about the

[80] Clause 2 of the Income-tax Amendment Act (Act XIX) 1920. NAI, Finance Department, Sep. Rev B., June 1920, No. 97.

[81] Statement of Objects and Reasons for a Bill to Amend the Law Relating to Super-tax, NAI, Finance Department, Sep. Rev A., June 1920, Nos. 88–95.

[82] B. N. Sarma, LCD, 11 March 1920, NAI, Finance Department, Sep. Rev B., June 1920, No. 98.

1918 Income-tax Act and they were eager to pass the Super-tax Act before the new legislative arrangement of the 1919 constitution was put in place. The government was not trying to prejudice Hindu families, the Finance Member, William Hailey, responded; the problem lay in the structure of the HUF itself. Throwing the problem back at Sarma, he called on him to join the Select Committee to which the Bill would now be referred, telling the legislature: 'If the Select Committee [with Sarma on it] can demonstrate that they have better brains than we have, if they can find any working device for getting over the difficulty, if they can surmount obstacles which I may say have baffled each and every one of the Local Governments that were consulted on the subject and each and every one of the persons whom the Local Governments themselves consulted, if they can find any such device, and it will not cause the loss of any considerable amount of income, we shall be glad to adopt it.'[83]

Sarma took up this offer and several weeks later offered a solution that was quite different to his earlier proposals. Responding to the shift in the Government of India's view of the relationship between the HUF, firm and company, Sarma now argued that the HUF was a unique and particular trading structure, the true character of which was not adequately captured in the proposed amendments. Rather than call for members of a HUF to be assessed as individuals, like company shareholders or members of registered firms, Sarma proposed that the tax exemption for HUFs should be raised from Rs. 50,000, the level set for all other 'persons', that is, non-registered firms and individuals, to Rs. 75,000. The extra Rs. 25,000 would provide compensation for the HUF's special tax liabilities, he argued. It would also give 'relief in the case of comparatively poor families', who were most penalised by the joint taxation model. Tax from undivided Hindu families did not run to more than 12 lakhs, Sarma contended, and this amount came largely from richer families with incomes well over Rs. 75,000, who would still be taxed under his amendment. Thus, government revenue would not be deeply affected by the change.[84] On this basis Hailey accepted Sarma's amendment.

Outside the legislature, the new HUF super tax threshold attracted little praise or even attention. As Sarma had argued, and as the administration's own figures confirmed, only a very small number of HUFs were eligible to pay super tax at all.[85] Rather than celebrate the change in Hindu families' tax status, the merchant community-owned press continued to focus on

[83] William Hailey. Ibid.

[84] LCD, 22 March 1920, NAI, Finance Department, Sep. Rev B., June 1920, No. 98.

[85] By December 1917, revenue officials in Bengal, Bihar and Orissa, Bombay, Madras, Punjab and UP had identified only seventy-eight HUFs which were eligible for super tax

the more general problems arising from the operation of income tax, particularly tax collectors' arbitrary approach to their work, and the absence of a proper appeal system for taxpayers. A few months after the new Super-tax Act had been passed, a Punjabi reader of *Bande Mataram* complained that, even with all the new legislation, 'in these days income tax is assessed on imaginary incomes', with collectors and tax commissioners given free rein to dismiss cases as they pleased.[86] Many other newspapers carried stories and reports that concurred with this view.[87]

Yet, at the level of colonial policy and legislative recognition, the 1920 Super-tax Act marked an important breakthrough, if not for wealthy Hindu families themselves then for their representatives. Breaking down earlier assumptions about the broad similarity between companies, firms and HUFs, the 1920 Super-tax Act recognised the HUF as a unique and special entity: it was taxed on a sliding scale, like other 'persons', but had its own tax threshold, a privilege shared by no other kind of taxpayer and which was awarded on the basis of its peculiar, hybrid business–family structure. The Act also did much to reinforce the view that the HUF described a clearly defined structure, followed by Hindu families across the subcontinent. It did so just as the central Indian legislature was opened up to a broader Indian electorate, a large proportion of which were educated and propertied Hindu men. This allowed the new Hindu legislators to present themselves as the spokesmen of a unique and clearly defined all-India mercantile community.

The Income-tax Act of 1922: the HUF and political representation

The 1922 Income-tax Act marked the end of the flurry of income tax legislation that had followed Meyer's 1916 reforms. It also consolidated the HUF's special tax status and thus secured new political influence for

payments, with forty-one of these found in Madras. In all provinces, other than Madras, the HUFs identified had an income of Rs. 1,99,999 or less (putting them in the first three of ten income brackets). In Madras, thirty-six of the taxed HUFs were classed in these brackets, though three families in the province had incomes of between Rs. 2,00,000 and Rs. 2,49,999 (the fourth tax bracket) and one family earned between Rs. 2,50,000 and Rs. 2,99,999 (the fifth tax bracket). In all provinces, the amount of tax collected from HUFs was substantially lower than that collected from companies, firms and even individuals. 'Provincial reports on the working of the Super-tax Act', December 1917, NAI, Finance Department, Sep. Rev B., November 1918, Nos. 176–200.

[86] *Bande Mataram*, 30 July 1920, IOR L/5/202.

[87] See *Sanj Vartaman*, a Parsi-owned Bombay newspaper, 29 April 1920, IOR L/5/177; *Insaf* and *Tribune*, both of Lahore, 3 and 8 March 1920 respectively, L/5/202; *Hindu*, another nationalist newspaper published in Sind, 27 November 1920, L/5/178.

the Hindu legislators who represented these wealthy merchant and professional families. As the fastest growing form of revenue under central government control, income tax had taken on a politically significant role in the construction of the new diarchic state established under the 1919 constitution. Having experienced great frustration at their inability to shape government fiscal policy during the First World War, from 1920 onwards urban Hindu legislators found themselves more able to use their unique position in terms of income tax policy to negotiate government support, or at least acquiescence, for other aspects of their own financial interest.

The first elections under the 1919 Government of India Act took place in June 1921, ushering in a new era of politics and of public spending. In spite of the many revisions made to income tax legislation in the few years before this, by the time the new legislators took their seats, the colonial administration's financial position was still deeply unstable.[88] As a result, the Government of India appointed a committee, which met in Simla in July 1921, to make recommendations for the amendment of the Income-tax Act. Reflecting the shift in the balance of legislative power, a handful of non-official legislators were asked to attend the committee's meetings, though the vast majority of its members, at least thirteen of the seventeen, were civil servants, ranging from senior-level administrators to lower-ranking provincial tax collectors.[89] The committee's report was framed firmly in terms of administrative efficiency and many of its proposals formed the basis of what became the 1922 Income-tax Act.

On the Simla committee's advice, super tax and income tax were amalgamated. Unlike all previous Income-tax Acts, which had contained both the rules for tax collection and a schedule of rates, the 1922 measure was cast simply as an Act of definition and procedure, with rates to be set in a separate Finance Bill, passed annually by the legislature. As long as the income tax had been set at a fixed rate, the combination of collection and rate scheduling in the Act had not been problematic, but this had changed with the move to a graduated tax. After the many recent revisions of the Income- and Super-tax Acts it seemed sensible to set in place a mechanism that allowed the adjustment of tax rates without the reform of the Income-tax Act as a whole. The new constitutional arrangement was another factor guiding this change. Officials argued that using the Finance Bill to set tax rates reflected their commitment to a more

[88] Thomas, *The growth of federal finance in India*, pp. 335–337.

[89] 'Report of the All-India Committee on Income Tax' (15 July 1921), p. 1. NAI, Finance Department, Sep. Rev A., May 1922, Nos. 28–39.

representative system of government in India in which elected representatives could be held more accountable to Indian taxpayers.[90] It also meant, however, that the basic terms of the Income-tax Act, including questions relating to how the HUF was taxed, could not be raised every time government wished to increase or alter income tax rates.

Reflecting the division of revenue under the Meston Settlement, the new Income-tax Bill stripped local governments of their powers to make and interpret rules for tax collection, making this the sole preserve of the Government of India. The machinery for tax assessment and collection was also radically restructured and centralised. The network of tax collectors was expanded and reorganised, creating specially designated income tax officers in every province, not simply Bengal and Bombay, who were managed by a central Board of Inland Revenue. When discussing this expansion of the income tax framework, non-official members of the Simla Committee had called on government to ensure that the new staff should 'consist of officers of the highest training and integrity . . . [and] emphasise[d] that the Income-tax Department should include experts of high standing trained in accountancy', in an attempt to avoid some of the more arbitrary modes of assessment that had been reported previously.[91] No strict rule was set down for the training of officers in the Bill, but the new measure did establish that the salaries and costs of all income tax officers would be covered by the Government of India, in an attempt to ensure consistency of quality. Within the new provincial income tax departments, the various tasks of collectors were to be more clearly divided and different individuals were made responsible for assessment and appellate work. In addition to this, clause 66 of the new Bill established that any assessee was entitled to appeal a tax assessment at the High Court. At the same time, however, 'in order to provide against frivolous and unnecessary applications', the clause set out that 'every application shall be accompanied by a fee of Rs. 100' and that 'to safeguard the revenue . . . the fact that a case has been stated to the High Court shall in no way stop the collection of the tax from the assessee'.[92]

One of the key aims of expanding the taxation machinery in this way was to ensure that officers could establish clearly the total income of individual subjects and thus also the rate of tax to which they were subject. As part of this, the new Bill removed the distinction between registered and unregistered firms. A firm continued to be assessed as a

[90] Note by William Hailey, 21 August 1921. Ibid.
[91] 'Report of the All-India Committee on Income Tax' (15 July 1921), p. 13. Ibid.
[92] Statement of Objects and Reasons for a Bill to Take the Place of the Indian Income-tax and Super-tax Acts (16 September 1921), para. 11. Ibid.

single unit, but rebates would be granted only if partners presented their individual accounts alongside those of the firm. Provided all profits were accounted for in the two sets of accounts, an individual partner could pay his share of the firm's income tax in accordance with his 'personal' rate – calculated by adding his profits from the firm to any other sources of income he might have – rather than at the tax rate that would be levied against the firm's total profits. In cases where members of a firm did not furnish information about their personal income, income tax was levied on the firm as a single unit. This could be beneficial if a member enjoyed a personal income that was larger than the firm's total profits, as he paid at a rate lower than would be the case if he included these earnings with his full income. If a partner in such a firm had a small personal income, however, he would end up paying a greater proportion of tax on his income than if he was assessed in accordance with his 'personal' rate.[93] Following the logic of all earlier amendments, this change to the Income-tax Act showed that the administration was willing to offer financial incentives to firms that facilitated taxation collection by placing information about their membership and financial transactions in the public domain, while penalising those that did not.[94] But by 1922, registration and the advantages it produced no longer belonged only to companies or registered partnerships, it was open to all types of trading groups, except the HUF.

Sarma's proposal to acknowledge individual members' share in a HUF estate was raised by two non-official members of the Simla Committee during its discussion, but firmly rejected by the only two Indian tax officials present at the meeting.[95] The committee made no suggestion of removing the HUF's unique super tax threshold of Rs. 75,000, which was enshrined in the new Bill, thereby consolidating the HUF as an exceptional unit, quite unlike any other group of taxpayers – firm members who did not present individual accounts were taxed as a single unit like the HUF but did not enjoy this super tax threshold. The unique status of the HUF was further reinforced by the committee's call for clearer distinction to be made between a Hindu's individually acquired

[93] Note by A. Tottenham, 13 March 1925, NAI, CBR, Income Tax Dept D (1925), F. 497-I.T.

[94] Indeed, Tottenham continued to use the terms 'registered' and 'unregistered' to distinguish between the two different ways of taxing firms explained above. Ibid.

[95] Mr Manmohandas Ramji, MLA from Bombay, and Rai Sahib Jadu Nath Roy raised the question of individual shares with the HUF but were opposed by Dewan Tak Chand (Commissioner, Ambala Division, Punjab) and K. S. Jatar (Inspector General of Registration in the Central Provinces). 'Report of the All-India Committee on Income Tax' (15 July 1921), p. 3. NAI, Sep. Finance Department, Sep. Rev A., May 1922, Nos. 28–39.

income and any profit he accrued as a member of a HUF. Tax collectors should assess an individual on the former only, and deal with all aspects of the family accounts separately. As one civil servant explained, the new Act 'allows the member of a Hindu undivided family a privilege that it allows to no one else. He is treated as combining in his own person two entities – his personal entity and his membership of his family.'[96] Far from reflecting preference for Hindu merchants and professionals, this was a result of the administration's attempts to tax as much of the profits made by Hindu family firms as possible. Yet within the new framework of representative politics, Hindu legislators found that government's concern to protect the high tax-paying HUF could, at moments, give them greater influence in negotiations about finance policy than some of their non-Hindu colleagues enjoyed.

To provide one example of this, in the course of their discussions, members of the Simla Committee considered permitting individual taxpayers to deduct the cost of life insurance from their taxable income. The committee decided to support this idea but turned down a recommendation from Madras-based Muslims that 'an allowance equal to or in lieu of insurance premia should be made in the case of those communities which have religious objections against life insurance'.[97] Such a provision would lessen, rather than augment, the tax yield. Later, when the central legislature came to discuss the terms of the new Income-tax Act, Hindu representatives argued that, as both a familial and business structure, the HUF should also be allowed to deduct the cost of life insurance from its taxable income, even though this provision had been intended for individual taxpayers only. This demand rested on the principle that underpinned the HUF's special super tax threshold, that it was both a business entity and a unit defined by a specific kind of family law. This made it hard for officials to reject it without opening up to question the logic by which they taxed the HUF as a single unit, a prospect that few relished in a legislature in which non-official, non-Muslim (i.e. largely Hindu) representatives held more seats than all nominated representatives put together.[98] Thus, while the request from Muslim representatives was

[96] Note by A. Tottenham, 13 March 1925, NAI, CBR, Income Tax Dept D (1925), F. 497-I.T.

[97] 'Report of the All-India Committee on Income Tax' (15 July 1921), p. 2. NAI, Sep. Rev A., May 1922, Nos. 28–39.

[98] Under the 1919 Act, there were forty-seven 'non-Muslim', general representatives in the central legislature, compared with forty-one nominated officials, a category that included government officials, Anglo-Indian, Indian Christian and Labour representatives. There were also four 'Commerce' representatives in the legislature, elected as 'special' representatives, though not all of these would have been Hindu. J. Chiriyankandath, '"Democracy" under the Raj', p. 61.

flatly refused, Hindu legislators' demand for tax exemption was incorporated under section 15(2) of the 1922 Act.[99] From the government's point of view, permitting the small cost of life insurance to be deducted from a HUF tax assessment was a price worth paying to hold the entity together and thus maintain high taxation yields in the long run.

Conclusion

By the mid 1920s, the Hindu undivided family had emerged as an important building block in the rapidly changing economic framework of the late colonial state. The Great War had precipitated a new kind of imperial relationship between India and Britain, placing pressure on the colony to extract capital from its subjects more directly than had been the case previously. Political reform provided one way to counterbalance the social unrest that this extraction could ignite. But these changes only added to the imperial administration's outgoings. Even though income tax generated less revenue than other tax heads, colonial officials saw it as a politically significant form of taxation because of its potential to expand over time, in line with the state's increasingly large patterns of spending. The prospective long-term growth of income tax revenue came to underwrite the colonial administration's promises of further political devolution to India and the emergence of a more representative and interventionist state structure. This helps to explain the shift in colonial policy making in this period away from the rural zamindar, the focal point of nineteenth-century imperial political economy, towards the urban-based professional and mercantile classes that dominated Indian politics in the twentieth century. Income tax reform was at the heart of a new kind of governance in India, enabling the changes that were to lead eventually to the complete transfer of power to Indian hands and the emergence of a democratic nation-state.

While the tax reforms facilitated the emergence of a system of limited, all-Indian representative politics, they cemented an important overlap in the functioning of colonial tax law and the Hindu legal system, a connection that prompted the colonial administration to engage with and recognise the economic concerns of wealthy Hindus in a manner that was not replicated with any other religious community. Even before 1916, colonial income tax law had singled out, and therefore granted special recognition to, Hindu property rights as different from those of other personal legal systems. The move towards an all-Indian system of

[99] Note by A. Tottenham, 13 March 1925, NAI, CBR, Income Tax Dept D (1925), F. 497-I.T.

stepped tax assessment pushed this relationship further, prompting colonial finance officials not simply to recognise the difference of Hindu law but to articulate and therefore help to endorse a clear definition of how the HUF was constituted and operated. The imperatives of the graduated taxation system prompted the colonial administration to endorse the notion that all Hindus, throughout India, followed the Mitakshara coparcenary model of joint family property relations. By the early 1920s, therefore, Mitakshara Hindu law was not simply being applied and upheld by the colonial courts: colonial taxation policy required finance officers throughout the subcontinent to apply the principles of Mitakshara Hindu law to Hindu taxpayers as part of the more general process of tax assessment.

These developments played out in very different ways inside and outside the legislature. Reports in Indian newspapers from this period suggest that, following the shift to stepped tax rates, local tax collectors 'recognised' Hindu family firms as particular targets of the new tax regime and tried to extract high levels of tax from them on the basis of their status as a HUF rather than their actual income levels. Within the legislature, however, the growing ranks of Hindu representatives began to see the special status of the HUF in income tax law as potentially beneficial. Though some Hindu legislators initially resisted the administration's income tax policy, by the early 1920s the political influence that came with being a high-level income tax payer meant that many of the representatives who took their seat under the terms of the 1919 Government of India Act were willing to endorse the administration's view of Hindu law. The 1922 Income-tax Act established a framework within which both Hindu legislators and colonial administrators were sympathetic to the rationalisation and codification of Hindu property law. But it still left unanswered many important questions about the nature and composition of the HUF, particularly in terms of its relationship with the structure of the Hindu joint family. Over the later 1920s and 1930s it was this familial aspect of the HUF that was to come under much closer scrutiny by colonial finance officials, and thus also under political contention.

3 Wives and property or wives as property? The Hindu family and women's property rights

In January 1922, as preparation for the amalgamation of the Income- and Super-tax Acts was reaching its final stage, Sambanda Mudaliar called on the Government of India to formulate a Bill that would 'enable the widows of undivided coparcenary families governed by Mitakshara law to get for their maintenance during their lives the whole income accruing from their husbands' shares of the family properties'.[1] Representing non-Muhammadans in the Tamil-speaking district of Salem and Coimbatore cum North Arcot, Mudaliar was himself subject to the Madras High Court's rigid interpretation of Mitakshara law.[2] But on the eve of the new Income-tax Act, he chose to frame his proposal in all-Indian, as opposed to regional, terms. Mudaliar did not present the measure as an attempt to break down the joint family or even to mark out individual divisions within it, but, as finance officials struggled to quell legislators' demands for the recognition of individual shares within a HUF, Mudaliar's focus on the more intimate relationship between husband and wife sat rather uneasily with the colonial administration's reading of Hindu family property as a clearly defined, single estate, unmarked by any individual or particular share. Unsurprisingly, therefore, the Government of India did not take up Mudaliar's suggestion.

Mudaliar's proposal brought together discussions about the Hindu family as an economic unit in relation to income tax with a wider set of debates about Hindu conjugality and the place of the married couple

[1] Recommendation to the central legislature, 12 January 1922. NAI, Home Department F.755/1922 – Judicial.

[2] Though not one of the more prominent figures in the central legislative assembly, Mudaliar had links with the better-known Tamil lawyer and social reformer T. V. Sheshagiri Iyer and K. C. Neogy, a Bengali Kayastha who later became known for his right-wing political views. *Times of India*, 28 March 1923. Such company suggests Mudaliar was not associated with or sympathetic to the anti-Brahmin movement that was gaining strength in south India at this time, even though, in challenging the 'traditional' vision of the multigenerational coparcenary that was based on the scriptural dictates associated with upper-caste practices, his Bill may have appealed to those who were.

within the Hindu joint family. Late nineteenth-century debates about romance and conjugality in Victorian Britain had encouraged elite Indians to reconsider the spiritual and affective basis of their own marital practices.[3] These discussions had also been driven by material pressures, as changes in the Indian economy, urban migration and new education and employment opportunities altered families' living arrangements and financial needs.[4] From the 1870s onwards, the married couple began to emerge as an important focal point for Hindu marriage ceremonies, as distinguished from the bride and groom's joint families. As Rochona Majumdar has argued, this was not a rejection of the joint family as the basic ideal or norm for Hindu domestic life. Rather, new marriage practices did much to reconstitute the hierarchy of the joint family by emphasising the links between the couple and the husband's parents and wider family networks.[5] These changes highlighted the married couple as autonomous from, but still contained within, a reworked form of the Hindu joint family.

The debates about the HUF and income tax policy provided a new, material context to Hindu reformers' discussions of Hindu family relations. The 1922 Income-tax Act established the HUF as distinct from the individual estate, but did not explain how the HUF related to the different forms of joint family ownership recognised within Hindu law. In defending their policy, income tax officials had argued that they could not calculate individual shares within the HUF because these were not recognised under Hindu law, thereby equating the HUF with the Mitakshara coparcenary. But even if the HUF was synonymous with the coparcenary, the different regional High Courts interpreted the operation and limits of the coparcenary in different ways. Did the HUF follow the view of the coparcenary given by the Bombay High Courts, or that applied by the Madras and Allahabad Courts? If finance officials had hoped that the 1922 Act had resolved discussion about Hindu family property rights, they were wrong.

Throughout the 1920s, calls for further discussion of Hindu family relations came from Hindu legislators rather than the colonial administration. Colonial finance officers had engaged in debates about Hindu family property only in so far as was necessary to support the policy of

[3] M. Borthwick, *The changing role of women in Bengal* (Princeton, N.J., 1984), pp. 109–150; T. Sarkar, *Hindu wife, Hindu nation: community, religion and cultural nationalism* (London, 2001), especially pp. 27–52; R. Majumdar, *Marriage and modernity: family values in colonial Bengal* (Durham, N.C., 2009), Chapters 4 and 5.

[4] Sreenivas, *Wives, widows and concubines*, pp. 45–50; B. B. Misra, *The Indian middle classes* (London, 1961), pp. 308–312, 316–338; Majumdar, *Marriage and modernity,* pp. 24–46.

[5] Ibid.

taxing the HUF as a single unit. Correspondence between government officials regarding private members' Bills show little desire to enter into detailed discussion of what many of them felt to be a complex and confusing legal system.[6] Yet the tax and constitutional reforms that followed the First World War had created a very particular link between colonial finances and Hindu law. Any hope that the 1922 Income-tax Act would help to secure colonial finances was dashed by the end of the decade, as the global, and imperial, economy went into meltdown. By the late 1920s, colonial officials began to engage with questions that went beyond the issue of how the HUF should be taxed to focus on property relations and Hindu family structures more generally.

The post-depression debates about the Indian family owed much to the structure of imperial monetary policy in this period. During the war, colonial finance officials had discovered that Indian financiers and investors could generate a considerable amount of capital, as well as the fiscal importance of the income tax-paying business and mercantile communities.[7] However, the sustainability and success of these funds depended on the Indian economy performing well. Thus the war gave the Government of India financial incentives to develop Indian industry and trade. Such a policy suited the interests of the British Government during the war, but in its aftermath, the metropole's own financial difficulties began to pull in the opposite direction. British politicians wished to develop their own economy, not support those of its colonies. Indeed, many officials feared that the growth of the Indian economy could in fact harm imperial monetary policy. The 1927 Currency Act had set the sterling:rupee exchange rate at the highly inflated level of 1s 6d. This put enormous pressure on the Indian Government to control inflation, which it managed largely through a policy of currency contraction, but the ratio ensured that the value of India's Home Charge payments remained consistent.[8] A healthy and developing Indian economy could also have secured the payments in the longer term, but from the British

[6] For example see note by William Gaskell, 27 September 1929. NAI, CBR, Income Tax Dept R-Dis. (1929), F. 437-I.T.

[7] The Government of India had looked to Indian lenders before the war but such loans had never exceeded Rs. 3 crores, with officials preferring to depend on the British Government and London money markets. In August 1916, the British Government announced that such loans would no longer be forthcoming, prompting colonial officials to turn to Indian lenders, who raised Rs. 53 crores in 1917 and Rs. 57 crores in 1918. Thomas, *The growth of federal finance in India*, p. 308.

[8] From 1922, the Government of India began to withdraw silver coins, melt them down and resell the silver, without expanding levels of paper currency to the same extent. Approximately Rs. 2,310 million coins were taken out of circulation in India between 1922 and 1938. D. Rothermund, *India in the great depression* (Delhi, 1992), p. 36.

Government's perspective, India was crucial as Britain's main debtor, not as the site for financial investment or, worse still, an economic competitor.

As the global depression began to set in, the Indian Government's deflationary policies hit families hard and many were forced to sell their familial wealth in order to survive. Drawing private wealth into the 'public' market, such sales made tax revenue officials eager to gather more information about how property was held within the Indian family. With many Indian legislators and lawyers just as eager to shield their wealth from state scrutiny, discussions about personal law once again became a battleground between the interests of the colonial administration and India's tax-paying classes. Whereas gender had been of marginal importance in the post-war debates about the HUF, the administration's interest in developing more specific information about family relationships meant that the conjugal family was the focal point of debate in the 1930s. As this chapter explores, these discussions created possibilities to think about women, or rather wives, as legal subjects, and even property holders, in their own right.

Women's politics and personal law reform during the interwar years

The interwar debates about Hindu law reform have received considerable attention from feminist scholars, who have seen this period as a critical turning point in the development of women's politics in India. As well as the rapid expansion of women's active participation in the Gandhian Congress movements, this period witnessed the birth of several all-India women's organisations that set out specific agendas and engaged with questions of legal reform on their own terms. Historians have argued that these developments marked a moment of shift in gender relations, when women ceased to be objects of reform to become political actors in their own right.[9] Many of the women who took part in these campaigns felt a sense of new-found empowerment. In her autobiography, published in 1982, Renuka Ray, a prominent woman leader in this period, who played a critical role in the Hindu Code Bill debates after being nominated by the Government of India to become the first female member of the Central Legislative Assembly in 1943, recalled:

[9] Forbes, *Women in modern India*, Chapter 3; Kumar, *The history of doing*, Chapter 4, especially pp. 57–62; M. Kishwar, 'Gandhi on Women', *EPW*, 20, 40, 41 (1985), p. 1691.

The nationalist movement had brought women out of seclusion. Women participated in their thousands in the Civil Disobedience movement. Women's organizations too were inspired by the nationalist fervour of women from all walks of life. We hoped to use the momentum of nationalism to change the social legislation of India and bring about one common code for the social laws that would remove the legal disabilities of women once for all [sic].[10]

The growth of women's political participation owed much to the constitutional changes discussed in the previous chapter. The first all-India women's movement, the Women's Indian Association (WIA), was set up in 1917 and propelled rapidly into the public sphere by the discussions about franchise reform as part of the 1919 Government of India Act. Formed initially as a social club, its founding members were also keen to encourage and improve women's education in the subcontinent and some, such as Sarojini Naidu, had strong links with the Indian National Congress.[11] When news of the constitutional reforms was announced, members of the Association approached the Indian Secretary of State, Lord Montagu, asking that provisions to improve women's education be incorporated into the new Government of India Act. When Montagu refused to do so, on the grounds that Indian women's education was a social rather than a political issue, the WIA changed its approach and called for women to be enfranchised under the 1919 Act, arguing that, given the administration's attitude, this would be the only way that they would secure their pedagogical cause.[12] The Southborough Committee that drew up the new franchise terms rejected the Association's appeal, but left it open to members of each provincial council to decide for themselves whether they wished to add women to the provincial franchise. The Bombay and Madras assemblies voted to accept women voters in the same year that they were established, and representatives in the United Provinces followed suit two years later in 1923. Bengal and Punjab agreed in 1926 and the assemblies in Assam, Bihar and Orissa and the Central Provinces did so only in 1930, when the next round of constitutional reforms were already under way.[13]

The establishment of the WIA was followed by the founding of the National Council of Women in India (NCWI) in 1925 and the All-India Women's Conference (AIWC) in 1927. The Indian branch of the International Council of Women, the NCWI included several

[10] R. Ray, *My Reminiscences: social development during the Gandhian era and after* (Kolkata, 1982, 2005 edn), p. 54.
[11] P. Sengupta, *Sarojini Naidu: a biography* (London, 1966).
[12] J. H. Cousins and M. E. Cousins, *We two together* (Madras, 1950), pp. 297–313; Forbes, *Women in modern India*, pp. 72–75.
[13] Forbes, *Women in modern India*, p. 101.

women members from elite business families, most notably Lady Mehiribai Tata.[14] Like the WIA, the Council was interested in women's education, as well as health issues and social uplift in urban slums, but, in its early years at least, kept some distance from nationalist politics. Set up following a conference to discuss women's education that had attracted female delegates from all over India, the All-India Women's Conference had much in common with the WIA – from its agenda to its leadership.[15] More so than the other two organisations, the AIWC operated through a network of provincial committees and as a result had the broadest popular membership and 'grass-roots' support base.[16] But even the AIWC remained heavily dependent on support from male nationalists and politicians to secure its aims. The AIWC and the WIA allied themselves with the Congress leadership, particularly at moments when constitutional reform was on the cards, but at a more day-to-day level also spent time writing to male leaders who had opted to work within the structures of the provincial assembly, asking them to speak at their regional meetings and to use their powers to draw up 'women-friendly' legislation.[17]

Scholars have highlighted pivotal moments when women leaders did succeed in shaping the Indian political agenda, most notably, perhaps, with the passage of the 1929 Child Marriage Restraint, or Sarda, Act. Yet, as Mrinalini Sinha has shown, male leaders supported women's rights in ways, and at moments, that benefited their own interests and political agendas, with the result that women leaders' claims to speak for all-Indian women could be undermined at critical moments.[18] Geraldine Forbes has highlighted the way in which Indian women's organisations were limited by a politics of respectability, which meant that in order to present themselves as 'national' bodies, groups such as the AIWC and the WIA had to follow the patriarchal gender norms set out by the politically dominant Congress leadership. Accepting this arrangement helped women leaders to secure greater prominence than they would have managed otherwise, but also placed severe limitations on their ability to secure more gender-equal reforms and also to reach out to a broader range of Indian women.[19]

[14] Ibid, pp. 75–78; Kumar, *The history of doing*, p. 66.

[15] 'Preface', All India Women's Conference on Educational Reform – Poona, 5–8 January 1927 (AIWC Archives, New Delhi); Basu and Ray, *Women's struggle*, pp. 18–29; Kumar, *The history of doing*, pp. 68–69.

[16] Basu and Ray, *Women's struggle*, pp. 32–39.

[17] See, for example, correspondence and newspaper clippings in AIWC Papers, F.1/1930–35 and in M. R. Jayakar Papers, F.215; F.241; F.366; F.372.

[18] Sinha, *Specters of Mother India*.

[19] Forbes, 'The politics of respectability'; see also T. Sarkar, 'Politics and women in Bengal – the conditions and meaning of participation', *Indian Economic and Social History Review*, 21, 1 (1984), pp. 91–101; Kishwar, 'Gandhi on Women', *EPW*, 20, 40, 41.

While these earlier studies have focused on the political imperatives that shaped male support for women's organisations and their agendas, this chapter highlights another, very important set of interests that shaped the outcome of debates about social reform in the interwar years – political economy. Mytheli Sreenivas has looked at how, by the early twentieth century, Hindu male merchants and professionals in Madras used arguments about caring for and protecting women as wives to secure greater autonomy over their wealth, away from the joint family estate.[20] Like Mudaliar, the Madrasi representative with whom this chapter opened, these men criticised the rigid patriarchy of the Mitakshara coparcenary, as it was understood to operate in the Presidency, on the grounds that it excluded vulnerable female heirs and dependants. If Hindu men were given a larger, more clearly delineated individual estate, they argued, they would be better placed to provide for their wives and daughters, both in their lifetime and also after their death, as individually owned property passed according to the laws of succession rather than survivorship. Of course, such an arrangement would also allow individual Hindu men to access a larger share of their family's capital more easily, without having to negotiate with other, potentially more powerful, male relatives. Mudaliar's Bill provides a perfect example of this kind of economic argument. Mudaliar's proposal suggested that Hindu property law, as it stood, privileged a form of family based on economic bonds between potentially quite distant male relations rather than the caring and loving relationships of the conjugal unit. His amendment held out the possibility of a new kind of legal structure, framed in terms of affection and mutuality, not dominance and hierarchy. If concern about women's sexuality had motivated debates about widow remarriage in the nineteenth century, by the early twentieth century widows' economic status became the focal point of debates about legal 'modernity', understood both in terms of individual access to capital and affective relationships.[21]

Moving beyond the issue of the individual household estates, this chapter builds on Sreenivas's argument to consider the way in which notions of national economy influenced and shaped the interwar debates about social reform and women's rights. It shows that state fiscal and tax policy played a critical role both in driving calls for legal reform and in influencing the terms on which reform was pursued, with a focus on building a single, nationally applicable system of not only Hindu but also Muslim personal law.

[20] Sreenivas, *Wives, widows and concubines*, Chapter 2.

[21] On love and affect as the hallmark of modern relationships see Majumdar, *Marriage and modernity*, p. 610.

The imperial economy and the Indian family: family property and the global depression in India

Alongside changes in income taxation, imperial monetary policy played a formative role in shaping discussions about personal law reform during the 1920s and 1930s. The restructuring of India's political economy after the First World War had greatly increased the Government of India's income, and outgoings, but it had also created rifts between the financial interests of the British Government and its colonial counterpart in India. The terms of the 1927 Currency Act, and the Indian Government's deflationary policies that accompanied it, suited British financial interests but did little to help those of Indian business and industry. High price levels for agricultural goods on the international market meant that India was able to meet its Home Charge payments. But the inflated value of the rupee, thanks to its link with sterling, made it difficult for Indian businesses to compete on the international market. As a result, there was considerable opposition within India to imperial currency policy, with many businessmen and Indian economists calling for an independent Indian gold standard, as well as the development of Indian banking and credit facilities.[22] Colonial stereotypes about the primitive nature of Indian, and particularly Hindu, attitudes to property informed British opposition to this proposal, with critics, who included John Maynard Keynes, arguing that Indians had a natural propensity for hoarding precious metals so that a gold rupee would have a devastating effect on the global gold market, with Indians drawing them out of circulation.[23]

The appointment of George Ernest Schuster as Indian Finance Member in 1928 did much to highlight the gap between metropolitan and colonial interests. Having served previously in Sudan, Schuster joined the Government of India with little experience of Indian civil service life and politics. His understanding of his role in India was much informed by Montagu's 1917 statement regarding India's transition to self-rule.[24] As he put it in his autobiography, published in 1979: 'I thought that the transition must be a gradual process which would take time and which for its full success

[22] G. F. Shirras, 'Gold and British capital in India', *The Economic Journal*, 39, 156 (1929), pp. 629–636; Rothermund, *India in the great depression*, pp. 37–38.

[23] J. M. Keynes, *Indian currency and finance* (London, 1913), especially pp. 165–166; G. Balachandran, 'Towards a "Hindoo marriage": Anglo–Indian monetary relations in inter-war India, 1917–1935', *Modern Asian Studies*, 28, 3 (1994), pp. 625–629; G. Balachandran, 'Gold, silver and India in Anglo–American monetary relations 1925–1933', *The International History Review*, 18, 3 (1996), pp. 578–582.

[24] G. Schuster, *Private work and public causes: a personal record 1881–1978* (Cowbridge, Wales, 1979), p. 92.

would depend on Indian confidence that the British members of the Government of India were working in the interests of India and not contrary to those interests under direction from Whitehall.'[25]

Soon after he took up his new post, Schuster showed that he was willing to question imperial policy that did not adhere to what he understood to be Indian interests. Several Hindu legislators used legislative discussion of the 1929 Finance Bill to reiterate their hostility to the government's policy of taxing the HUF as a single unit. In response, Schuster admitted to the Central Assembly that, in his view, the situation concerning taxation of the Hindu undivided family had not been fully resolved and would be a matter for government consideration when the legislation was next revised.[26]

Schuster's comments prompted a swift response from one Hindu legislator, M. R. Jayakar. A lawyer from Bombay, Jayakar was a prominent figure in the interwar discussions about Hindu law reform. A member of the Pathare Prabhu caste, a high-status and traditionally highly educated caste found almost solely in Bombay, Jayakar was not a Brahmin but, as a prominent figure in the Hindu Mahasabha, he was interested in consolidating a strong, united Hindu community under high-caste leadership.[27] Shortly after the passage of the 1922 Income-tax Act, Jayakar founded the Hindu Law Research and Reform Association, an organisation that brought Hindu legal scholars and barristers across India into closer contact to discuss the operation and improvement of the Hindu legal system. Though it remained a very small organisation, it had strong expansionist aspirations and its few members worked hard to publicise its work in local and national newspapers and through self-published pamphlets.[28]

Jayakar believed in the benefits of law reform at a centralised, all-India level, but he also felt strongly that the version of Mitakshara law practised in his home province should be the basis of any future Indian-wide Hindu legal system. In 1921, Seshagiri Ayyar, who held the university representative's seat in the Madras Legislature, had moved a private members' Bill that would allow the more 'advanced' principles of the Bombay school of Hindu law to be applied by the Madras and UP courts.[29]

[25] Ibid, p. 90.
[26] List showing the undertaking given by the Hon'ble Member in the course of his speeches in the Legislative Assembly, 27 March 1929. GoI, CBR, Income Tax Dept R-Dis. (1929), F. 437-I.T.
[27] M. L. P. Patterson, 'Review article: M.R. Jayakar, *The story of my life Vol. I 1873–1922*', *The Journal of Asian Studies*, 18, 3 (May 1959), p. 404.
[28] M. R. Jayakar Papers, F.4.
[29] Note by S. C. Gupta and H. M. Smith, 29 June 1921, NAI, Home Department, F. 155/1922 – Judicial.

Jayakar eagerly endorsed this view. In a letter to Kamakashi Natarajan, editor of the Madras weekly *Indian Social Reformer*, a journal that was seen as a key mouthpiece of the progressive reform movement in the southern Presidency, Jayakar explained: 'I am aware of the necessity of introducing many changes in the Indian Law of adoption so as to bring the other provinces into conformity with the law in Western India, which is more liberalised than elsewhere.'[30]

Jayakar had been planning a Bill relating to widows' maintenance before Schuster's comments in the Finance Bill debate. In June 1928, Jayakar revealed his plans in a letter to Mrs Dhanvanthi Rama Rau, a prominent social reform campaigner who was involved with the AIWC.[31] 'You will be glad to hear that I am preparing two Bills,' he wrote to her, 'which will enable Hindu widows to take their husbands' share of property in a joint family in cases where they have no male issue.'[32] Over the following year, Jayakar made little progress with these plans. But in early June 1929, a few months after Schuster's comments in the Finance Bill debate, he wrote to the Advocate General to request a copy of Vembakkam Bhashyam Iyengar's Hindu Gains of Science Bill, explaining that he was interested in reviving the issues addressed in the measure.[33] Examined in Chapter 1, Iyengar's Bill sought to establish a Hindu professional's salary as his individual, rather than joint family, property.

Schuster's correspondence with colleagues in the wake of the Finance Bill debate reveals that he was aware of Jayakar's request. Schuster had no difficulty with the practice of assessing the Hindu family as an undivided collective, he explained, but he was concerned by claims that an individual family member's salary could be included as part of the HUF estate:

> If each [member of a Hindu undivided family] had been specially educated out of his joint family income, then all of his separate subsequent earnings would be pooled together with those of the other parts of the joint family income . . . If this can happen under the present laws – and I was distinctly informed at the time of the debate that it could happen – then I think the provisions of this law are unfair.[34]

[30] Jayakar to Natrajan, 21 August 1928, M. R. Jayakar Papers F.377.

[31] Dhanvanthi Rama Rau was the wife of the diplomat Benegal Rama Rau and sister-in-law of Benegal Narsing Rau, chairman of the committee that compiled the first draft of the Hindu Code Bill. She became president of the AIWC in 1946 and founded the Family Planning Association of India in 1949. Dhanvanthi Rama Rau, *An Inheritance: the memoirs of Dhanvanthi Rama Rau* (New York, 1977).

[32] Jayakar to Mrs Rama Rau, 5 June 1928. M. R. Jayakar Papers, F.241.

[33] Jayakar to Alladi Krishnaswamy Iyer, Advocate General, 12 June 1929. M. R. Jayakar Papers F.636.

[34] Note by George Schuster, 13 June 1929. NAI, CBR, Income Tax Dept R-Dis. (1929), F. 437-I.T.

Tax officials assured him that it was not official practice to tax a salary as joint family property, but, given the history of regional difference in tax collection policies, acknowledged the possibility that some tax collectors had not been adequately briefed by the central government about correct assessment methods in such a situation. To remedy this, they suggested the amendment of the, now all-India, Income Tax Manual to make official practice clear for members of the public.[35] Schuster agreed to this idea but, given popular opposition to income tax, suggested that it might be advantageous to the administration if officers developed these changes in conversation with Hindu legislators. He recommended that finance officers work with tax commissioners as well as members of the Legislative Assembly 'who have shown special interest in this matter ... for example ... a man like Mr Jayakar' in order to decide the precise wording of the amendment.[36]

A week after Schuster made this suggestion, Jayakar wrote to the Government of India to request leave for the introduction of his Bill, renamed The Hindu Gains of Learning Bill.[37] In terms of substance, there was very little to separate Jayakar's Bill from Iyengar's earlier draft, though Jayakar now reframed its proposals to apply to Hindus throughout India, not only in Madras. He also chose to present his measure in different terms from those used by Iyengar, arguing that his proposal was vital for the maintenance of conjugal welfare and respectability. Securing a man's salary as his individual property, he argued, would enable him to look after the daily needs of his wife. The undivided family estate served Hindu interests in the past, but, he explained, was less suitable for 'the altered conditions of present-day life, when ... the members leave their ancestral home for different places to seek their living by new pursuits'. The more fast-paced pressures of 'present-day life' made it imperative for men to have speedy access to and autonomy over capital, access they did not have if all their wealth was locked away in a joint family estate, which required the consent of all other members for any transaction. This was not an attempt to abolish the institution of the joint family, which Jayakar thought was already becoming weaker under social pressure. Rather, Jayakar argued that his Bill could prevent further fragmentation and partition of the joint family by securing more clearly the parameters and terms of the individual estate. His Bill not only marked out salaries as the definite property of the individual who earned

[35] Note by William Gaskill, 24 June 1929. Ibid.
[36] Note by George Schuster, 4 July 1929. Ibid.
[37] Jayakar to Secretary, Indian Legislative Assembly, 12 July 1929. M. R. Jayakar Papers F.636.

them, it also stressed the individual's autonomy, away from his joint family, to spend that wealth as he wished. Rather than find a place for the married couple within the joint family or HUF, as Mudaliar had tried to do, Jayakar sought to establish the individual estate as the financial basis of Hindu conjugal life and, by extension, husbandly authority.[38]

Jayakar was willing to discuss reform of the Income Tax Manual with government officials but did not want to link his own measure to government interests. He bitterly opposed officials' suggestions that in cases where an individual received 'a specially elaborate and expensive education', his salary should continue to be considered joint family property.[39] Asserting his superior knowledge of the Hindu legal system, Jayakar argued that this suggestion was not in keeping with the 'true' Hindu law set out in his own measure.[40] Schuster backed Jayakar against the tax commissioners, arguing: 'I think we shall get into practical difficulties over this question of a *special* education at the expense of the joint family ... It seems to me that once it is admitted that a man's earnings from his own exertions can be treated as his individual income, it is really not justifiable to adopt a different principle when the cost of his education has been borne by his joint family.'[41]

Jayakar and Schuster eventually won this argument, though this had much to do with wider global events. The stock market crash and, even more significantly, the collapse of grain prices in late 1929 plunged India into deep economic depression. The rapid fall in India's trading figures had an immediate effect on customs revenue, one of the Government of India's main sources of revenue under the Meston Settlement, while the cost of governance and service provision remained as high as ever.[42] In this context, Jayakar's Bill came to be seen as a measure to fine-tune the income tax system. Defining the parameters of self-acquired property for Mitakshara-governed Hindus throughout India, the Gains of Learning Act did much to reinforce the notion that all other forms of property were

[38] Statement of Objects and Reasons for the Gains of Learning Bill, 12 July 1929. NAI, Home Department 624/1929 – Judicial.

[39] Office of the Commissioner of Income tax, Bombay Presidency, to W. Gaskell, Member, Central Board of Revenue, 31 July 1929. The Bombay commissioner won support for this proposal from the Tax Commissioner of UP, where professionals were assessed on the same basis as in Madras. From Commissioner of Income Tax UP to William Gaskell, received 20 August 1929. NAI, CBR, Income Tax Dept R-Dis. (1929), F. 437-I.T.

[40] William Gaskell noted that Jayakar had 'rather plunged me out of my depth on various points' of Hindu law during their exchange about this issue, 27 September 1929. NAI, CBR, Income Tax Dept R-Dis. (1929), F. 437-I.T.

[41] Note by Schuster to William Gaskell, Member of the Central Board of Revenue, 29 September 1929 (emphasis in original). Ibid.

[42] Thomas, *The growth of federal finance in India*, pp. 357–360.

owned collectively by the HUF. Clearer legal conceptions of both forms of estate – HUF and self-acquired – allowed finance officials to scrutinise subjects' income even more carefully and to pursue tax claims more aggressively.

Jayakar's Bill was passed quickly and easily by the legislature, making it onto the statutes almost exactly a year after it was introduced.[43] While it was heralded as an Indian-led reform measure, its provisions won strong support from the colonial administration. Ongoing financial difficulties prompted the Government of India to announce an emergency budget in September 1931 in which the exemption theshold for income tax was lowered from Rs. 2,000 a year to Rs. 1,000 (see Table 3.1).[44] The super tax threshold was also lowered, from Rs. 50,000 to Rs. 30,000, for all taxpayers except the HUF, which retained its special limit of Rs. 75,000. In October 1931, Khan Bahadur Jamshedji Bejanji Vachha, the Commissioner of Income Tax for Bombay, wrote to the Central Board of Revenue urging officials to adhere to the tax procedures resulting from Jayakar's Act. As a result of the change in rate levels, Vachha explained, Hindu professionals in his region were now trying to include their salaries as part of their joint family tax return rather than submit personal accounts that were more than Rs. 30,000.[45] Jayakar's Act allowed the administration to contest these claims and pursue Hindu businessmen and professionals for larger tax payments, while preserving the unit of the higher-tax-paying HUF.

Women, family wealth and the Indian currency crisis of 1931

The global depression of the 1930s initiated a new chapter in the debates about Hindu family property. The tussle between the financial needs of the metropole and colony in this period further exposed Indian subjects' wealth to official scrutiny. As the Government of India struggled to manage inflation in line with Britain's demands, Indian subjects were forced to sell their private wealth on public markets,

[43] The measure was passed by the Council of States on 18 July 1930, 'Council of State Debates', II, 6: 18th July 1930, NAI, Home Department 624/1929 – Judicial.

[44] Coupled with new rates for super tax, these reforms are estimated to have raised an additional Rs. 5 crores from income taxation. Thomas, *The growth of federal finance in India*, p. 362.

[45] The HUF retained its special super tax threshold of Rs. 75,000 as set out in the 1920 Super Tax Act – see previous chapter. Vachha to Mr A. H. Lloyd, Member, Central Board of Revenue, 1 October 1931. NAI, CBR, Income Tax Dept D-Dis. (1931), F. 631-I.T.

Table 3.1 *Statement showing the rates of income tax from 1922–1923 to 1938–1939*

Grades of income	Rate in pies in the rupee		
	1922–1923 to 1929–1930	1930–1931	1931–1932 to 1938–1939
2,000–4,999	5	5	6
5,000–9,999	6	6	9
10,000–14,999	9	9	12
15,000–19,999	9	10	16
20,000–29,999	12	13	19
30,000–39,999	15	16	23
40,000–99,999	18	19	25
1,00,000 and above	18	19	26
Company and registered firms whatever its total income	18	19	26

Rates under 'lower incomes', introduced after 1931

Grades of income	Rate in pies in the rupee			
	1931–1932	1932–1933 and 1933–1934	1934–1935	1935–1936
1,000 to 1,499	2	4	2	1 1/3
1,500 to 1,999	2	4	4	2 2/3

From 'Income-tax Manual, issued by authority of the central government (eighth edition) corrected up to 1 July 1939' [Published by the Manager of Publications, Delhi, 1939].

prompting new interest among colonial tax officials in the married couple as a property-owning unit.

From his arrival in India, Finance Member George Schuster had opposed the inflated rupee:sterling ratio set by the 1927 Currency Act and the currency contraction policy through which it was maintained. As international trade collapsed, it became almost impossible to control Indian inflation in the way that was needed to maintain the currency rate. In spite of Schuster's concerns that imperial economic policy could lead to widespread social unrest, particularly in rural areas, the British Government refused to alter the ratio.[46] It did agree, however, that as

[46] Schuster, *Private work and public causes*, pp. 102, 105–109.

Britain had set the exchange rate, it should help to maintain the rupee's high value. In many ways this added further strain to the Indian economy as Whitehall put even more pressure on the Government of India to uphold an exchange rate that was now part-funded by the British taxpayer. The British Government began to call on the Indian administration to increase India's gold reserves in London. Schuster refused, but agreed to step up the administration's currency contraction programme, taking even more cash out of the economy at a point when Indian business and agricultural production were desperate for capital.[47] By late August 1931, the Indian economy looked to be on the verge of collapse. It was at this point that the Government of India announced its emergency budget (and active implementation of Jayakar's Gains of Learning Act), a move that showed its willingness to risk social unrest rather than economic meltdown.[48]

A few days later, without consulting its Indian colleagues, the British Government announced that sterling was leaving the gold standard.[49] The pound was permitted to float against other currencies, a policy that helped to bring down inflation and improve Britain's balance of trade by making sterling more internationally competitive.[50] Schuster immediately requested that the rupee also be allowed to float. This would allow the Indian Government to pull back on its deflationary policy, which was only exacerbating the crisis of liquidity within the wider Indian economy.[51] His request was flatly refused. The rupee was to remain pegged to sterling at 1s 6d, the rate set by the 1927 Currency Act, thereby securing steady and substantial Home Charge payments which could be used to buffer the British economy.

Schuster was outraged, but sterling's departure from the gold standard was to produce an unforeseen solution for the Indian Government's economic difficulties. Lack of confidence in sterling had kept the price of gold low while the pound remained tied to the gold standard. Its exit meant that the value of gold now rose more or less in correlation to the drop in the value of the pound, with the consequence that London quickly became a vibrant international market for gold. The maintenance of the Currency Act meant that the collapse of the pound's gold value had a knock-on effect on the value of the rupee, creating severe financial difficulties for debtors in India. With the rupee now worth a quarter of its

[47] Rothermund, *India in the great depression*, pp. 47–48. [48] Ibid, pp. 40–43.
[49] Schuster, *Private work and public causes*, pp. 112–115.
[50] S. Howson, 'The management of sterling, 1932–1939', *Journal of Economic History*, 40, 1 (1980), pp. 53–54.
[51] Rothermund, *India in the great depression*, pp. 40–42.

previous value, debtors began to sell liquid assets. In the weeks that followed sterling's exit from the gold standard, India's gold sales increased dramatically, the vast proportion coming not from state coffers but from private transactions.

Much of this gold came from rural peasants. Gold had long played a central role in the complex cycles of debt and credit that serviced cash crop production in India. Markets were highly volatile, even at the best of times, and the very nature of production meant that Indian farmers would build up stocks during profitable periods but often find themselves having to borrow funds during fallow periods of the year. Without access to official credit facilities, many peasants found gold to be the most suitable liquid asset for their needs. In the absence of banks, one of the safest places for peasants to keep their wealth was on their bodies. Men did wear jewellery, but in many cases family wealth was invested in ornaments worn by women.[52]

The agricultural markets were very much at the heart of the financial bubble of the 1920s. High prices for grain and other crops produced in India helped to raise peasants' income, even without an increase in output. Much of this profit was used to buy gold jewellery. Frank Brayne, Deputy Commissioner of Gurgaon, Punjab, noted the widespread tendency among the peasants in this region to wear large quantities of gold ornaments and jewellery.[53] Living in the most agriculturally prosperous province in India, peasants in Punjab were particularly exposed to the price boom of the 1920s. Between 1922 and 1923, India imported 41.5 per cent of world production of gold; this fell to 26.6 per cent the following year but rose to 66.6 per cent in 1924–1925.[54]

The devaluation of the rupee in September 1931 put the process of gold accumulation into reverse. When the Indian currency offices were reopened, several days after the announcement about sterling's departure from the gold standard, they were inundated with gold ornaments and jewellery. Touring provincial currency offices in the immediate aftermath of the currency crisis, Schuster describes, with some sadness, 'great piles of gold ornaments, some of them of considerable artistic value, lying in heaps in the corner having been sold just for their gold

[52] V. T. Oldenberg, *Dowry murder: the imperial origins of a cultural crime* (Oxford, 2002), pp. 163–166. See also D. Jacobson, 'The women of north and central India: goddesses and wives', in D. Jacobson and S. S. Wadley (eds.), *Women in India: two perspectives* (Delhi, 1992), pp. 21–22.

[53] C. Dewey, *Anglo-Indian attitudes: the mind of the Indian Civil Servant* (London, 1993), pp. 81–83.

[54] Shirras, 'Gold and British capital in India', p. 630.

value'.[55] Between September 1931 and February 1935, gold sales made up between a quarter and a third of India's total exports, while the average value of gold leaving India each year during this period was around Rs. 600 million.[56] With London traders offering competitive prices, much of this gold was sold in the metropole, thereby helping to stabilise the value of the floating pound.[57] The sale of Indian peasant families' liquid assets and, in particular, Indian women's private and dowry property thus played a critical role in buoying up the imperial economy and easing problems of liquidity in Britain.

In India, the gold sales impoverished many of those involved with agrarian production, which still formed the mainstay of the national economy. Urban professionals and those on a fixed wage were able to draw some benefits from the low price of food and imported goods in this period, but they weren't spared from the jaws of imperial finance for long. The Indian economy had survived the threat of bankruptcy, but the Government of India remained heavily indebted. With further constitutional reforms on the horizon, the administration remained as cash-hungry as ever. Against this backdrop, women's property rights and their position within the domestic economy became the subject of increasing scrutiny by the colonial administration.

The emergence of an Indian female economic subject 1930–1937

The decade that followed the depression has been seen as a particularly important one in the story of the Indian women's movement. In this period, 7 per cent of all Indian women were given voting rights, at both the central and provincial level, and the central legislature passed two ground-breaking law reform Acts.[58] The Hindu Women's Right to Property and the Shariat (Application) Acts of 1937 secured important new property rights for Hindu and Muslim women respectively. Receiving strong support among the *ulama*, or Islamic scholars, the Shariat Act has been understood as a measure driven primarily by religious concerns

[55] Schuster, *Private work and public causes*, p. 115.
[56] Rothermund, *India in the great depression*, p. 54. [57] Ibid, pp. 48–49.
[58] The 1935 Government of India Act granted voting rights to around one in fifteen Indian women, though there was considerable variation in the number of women enfranchised to vote in the different provincial assemblies, from a quarter in Madras to one in fifty in the North West Frontier Provinces. Though the women's organisations campaigned vociferously against it, women were given reserved assembly seats (thirty-two seats in total over all eleven of the provincial assemblies) on the basis that they constituted an electoral minority. Chiriyankandath, '"Democracy" under the Raj', p. 71. See also Singer, *A constituency suitable for ladies*, Chapter 1.

and the desire to construct a more uniform, all-Indian Muslim community.[59] The passage of the Hindu Women's Right to Property Act, meanwhile, has been attributed to growing awareness of and support for women's political rights among liberal male representatives, though notably not those allied to the Indian National Congress.[60] But as this section explores, looking beyond politics and religion to contemporary issues of political economy reveals that government fiscal policy was a critical force in shaping the timing and the all-India nature of these important legal changes.

As had been the case after the war, the negotiations about constitutional reform in the 1930s were shaped as much by the administration's financial needs as by the demand for Indian self-rule. In its report, published in 1930, the Indian Statutory Commission, known more commonly as the Simon Commission, had called for an enhancement of both the quality and the quantity of the Indian franchise. 'The present franchise is too limited in its scope to provide the material from which to build any adequate scheme of representative government', Commission members argued,[61] though they firmly rejected the demands for universal suffrage made by leaders of the Indian National Congress and the all-India women's movements.[62] The administrative machinery would be unable to cope with such a large increase in voters overnight, its members explained. Like many officials, and even members of the Congress, the Simon Commission's vision of popular representation had little to do with enfranchising the 'unwashed masses' and rather more to do with co-opting the propertied classes in the project of governance.[63]

The Commission called for voting rights to be granted not simply on the basis of residence and property qualifications, as they had been in 1919, but also on the basis of education. This would not change the character of the electorate, the Commission's members reassured the Government of India, but simply expand the size of the political classes. 'We are disposed to think that those below the line of qualifications are in many cases fully as fit for the vote as many who have it.'[64] If census figures were to be believed, there were substantially more literate adult

[59] Anderson, 'Islamic law and the colonial encounter in British India', p. 184; Janaki Nair, *Women and law in colonial India*, pp. 192–194.

[60] Ibid, pp. 197–198; Forbes, *Women in modern India*, pp. 113–115.

[61] Government of India, *Report of the Indian Statutory Commission* (London, 1930), Vol. II, p. 89.

[62] Ibid, pp. 90–91.

[63] David Washbrook, 'The rhetoric of democracy and development in India', in Jayal (ed.), *Democracy in India*, pp. 82–96.

[64] Government of India, *Report of the Indian Statutory Commission* (London, 1930), Vol. II, p. 90.

Indians than voters, the report continued. The Commission explained this discrepancy with reference to joint property rights under Hindu law and the fact that the administration focused on the singular HUF, rather than its individual members, when drawing up policy. 'The manner in which property belonging to a Hindu joint family is held necessarily cuts out many educated Indians from qualifying under the present electoral tests . . . there must be hundreds of clerks in business offices in Calcutta and other big cities who have no vote.'[65] As a result, the Commission proposed the introduction of an education qualification, recommending that subjects who had completed their education up to the fifth standard at school be given voting rights.[66]

The Commission members' concern about discrepancies between franchise regulations and Indian social practices led them to reconsider another aspect of the voting rights drawn up under the 1919 Government of India Act – women voters. Without criticising the earlier Southborough Committee's decision to exclude women from the franchise, members of the Simon Commission considered the fact that all eight provincial legislatures had, by the time of their meeting, decided to admit women voters to be 'a gesture of high significance . . . But so long as the qualification for the vote is almost entirely a property qualification, it will remain a gesture because India's women do not own property in their own right.'[67] This was a further argument for broader franchise qualifications, the Commission argued. As well as women who were educated and propertied in their own right, the franchise should include the wives and widows of men who were qualified to vote, as long as they were over twenty-five years of age. This would, the Commission argued, create a much larger female electorate than would be the case under only property or literacy qualifications, without 'introducing at this stage too heavy a proportion of women in the electorate'.[67a]

Indian women's groups protested vociferously against the wifehood qualification.[68] Male Congress leaders lent support to the women's movement's cause by passing a resolution on Fundamental Rights at their 1931 session in Karachi, which included equal franchise rights for men and women.[69] But when the Government of India announced its

[65] Ibid. See also ibid, Vol. I., p. 192. [66] Ibid, Vol. II, p. 92.
[67] Ibid, Vol. I, p. 191. [67a] Ibid, Vol. II, p. 94.
[68] C. Candy, 'Competing transnational representations of the 1930s Indian franchise questions', in I. C. Fletcher, L. E. N. Mayhall and P. Levine (eds.), *Women's suffrage in the British empire: citizenship, nation and race* (London, 2000), p. 197; Sinha, *Specters of Mother India*, pp. 225–232.
[69] 'Indian National Congress, 45 Session – Karachi, 31 March 1931: Resolutions recommended by the subjects committee', AICC Papers F.25/1931 NMML.

Communal Award in 1932, the Congress's demand for universal franchise, and with it a concern about relations with the women's movement, was quickly sidelined as leaders sought to re-establish a single 'Hindu' electorate.[70] Colonial officials were equally disinterested in Indian women leaders' arguments against the wifehood qualification. For the administration, there was much to gain from a franchise that linked property rights with conjugal status. Marriage brought wealth, particularly liquid assets, to a family in the shape of dowry. To make marriage a necessary requirement for women to vote, therefore, allowed the state to monitor more closely the flow of wealth and property through marital networks. While finance officials had worked hard to avoid the question of marriage and its relation to the HUF before the depression, they became increasingly concerned to define more accurately the way in which marriage affected a woman's position within her husband's wider family.

Who is in a HUF? Hindu women's property rights and their position within the Hindu joint family

Government interest in monitoring the links between marriage and capital circulation began to influence colonial income tax policy in the wake of the depression. The colonial administration responded to the global economic crisis by once again tightening up its mechanisms of revenue collection. Taxpayers were swift to use their hard-won right of appeal to oppose the administration's increasingly aggressive pursuit of their wealth. A particular source of grievance in this period was the very broad way in which tax officials defined a HUF. As already discussed, the terms of the 1922 Income-tax Act had presumed the existence of a single, all-Indian model of the HUF when this was far from an established legal reality. As officials applied this reading of the HUF more vigorously in order to extract levels of tax, they faced challenges from Hindu taxpayers who questioned the administration's rather simplistic understanding of Hindu property law.

In October 1930 V. S. Sundaram, Commissioner of Income Tax for Bihar and Orissa, rejected an appeal by Ghanshyamdas Ramkumar of Purulia, Manbhum District to have his business assessed as a legal partnership rather than as a HUF. At this point there existed no definite legal ruling relating to a Hindu family firm's ability to register as a

[70] Sinha, *Specters of Mother India*, pp. 235–244; Singer, *A constituency suitable for ladies*, pp. 31–38.

partnership. Rather than seek to argue this point of law, however, Ramkumar explained that his business, which he owned with his brothers, was a partnership because it had been started using their individual, self-acquired property rather than inherited family funds. The brothers had come to Purulia with only their '*cambal*' (blanket) and '*lota*' (a pot used for religious ablutions), he explained. They had funded their businesses using capital from their individual endeavours, not from the family estate. To defend his claim, Ramkumar presented a deed of partnership signed by himself and his three brothers.

Assessing the case, Sundaram expressed considerable doubt that the brothers had possessed enough individually acquired capital to set up the business. In his view it was 'reasonably certain that the business must have been financed in its early stages at least by family funds'. But it was the brothers' living arrangements that he held as conclusive proof that they should pay tax on their business as a HUF. The brothers explained that they lived together with their wives and children in 'joint' property, sharing kitchen and worship space. There had been no history of dividing profits or keeping separate accounts since the business had been set up. In Sundaram's view, the way in which the brothers used their funds to support not simply themselves but also their dependent wives and children overrode any legal document of partnership and Ramkumar's appeal to have his case heard in the Patna High Court was rejected.[71] Tax officials in Burma reached the same conclusion when hearing a similar case a few months later.[72]

It was no doubt with these cases in mind that the Government of India drew up section 5 of the Indian Partnership Act (Act IX of 1932), which was passed by the central legislature in April 1932. This section established the status of the Hindu undivided family as a corporation based on custom rather than contract, meaning that members of a Hindu undivided family could not be seen as partners and were not permitted to avail themselves of the law of partnership set out in the Act.[73] The section provided further legal reinforcement for the administration's policy of taxing the HUF as a single unit at a moment when it faced serious financial difficulty.

Some taxpayers were successful in taking their appeals to the High Courts where they were sometimes heard by sympathetic judges. As

[71] Income tax revision case no. 40/R of 1930–31, order dated 18 October 1930, NAI, CBR, Income Tax Dept – R. Dis. (1932), F. 110-I.T.

[72] Income Tax Department Order, Bassein District, dated 30 May 1932, NAI, CBR, Income Tax Dept – R. Dis. (1933), F. 428-I.T.

[73] S. Tr. Desai, *The law of partnership in India and Pakistan*, 3rd edn (Calcutta, 1964), p. 25.

Mitra Sharafi has pointed out, historians too often assume that judges and court officials shared the interests of the legislators who enacted the laws they applied.[74] Like the political system, the Indian legal system had been open to a process of devolution so that by the 1930s, many senior positions in the judiciary were held by Indians.[75] Lawyer-politicians had been at the forefront of the drive for legislative reform of personal law from its outset.[76] Many Indian judges were not immune from the sentiments that had prompted legislators to support change in family law. Nor were they impervious to the social impact of the depression on family structures. As income tax commissioners continued to squeeze taxpayers, in spite of the economic downturn, the courts found plenty of ground on which to question the precise definition of HUF in the administration's income tax policy.

Justice Vepa Ramesam's verdict in the 1932 case of Vedathanni v. Commissioner of Income tax posed a significant challenge to the way in which income tax officials defined a HUF for tax purposes. Appointed to the Madras High Court in 1920, Justice Ramesam was a prominent supporter of social reform in the southern Presidency and a founding member of the Madras Neo-Malthusian League, which worked hard to make contraception and birth control part of public debate.[77] His ruling in the case brought by Vedathanni raised important questions for income tax collectors about the status of the widow in relation to the HUF estate.

A widow from Tanjore District of Madras, Vedathanni had successfully sued her brother-in-law and his heirs for maintenance payments from her husband's ancestral estate after his death. With her maintenance award, Vedathanni also received a demand for income tax from Francis Senneck, the commissioner of income tax in the Madras Presidency. Senneck billed her for tax on her annual Rs. 6,000 allowance but also on the sum that the

[74] Looking at cases involving dower under Anglo–Muslim law, Sharafi has shown how judges, British and Indian, interpreted legislation in line with their own notions of what was socially just. Legislation intended to curb large dowers for Muslim women was sometimes used to provide divorced wives with considerable financial support from their former husbands. M. Sharafi, 'The semi-autonomous judge in colonial India: chivalric imperialism meets Anglo–Islamic dower and divorce law', *IESHR,* 46, 1 (2009), pp. 57–81.

[75] S. Schmitthener, 'A sketch of the development of the legal profession in India', *Law & Society Review*, 3, 2/3 (November 1968–February 1969), especially pp. 365–369, 372–374.

[76] H. L. Levy, 'Lawyer-scholars, lawyer-politicians and the Hindu Code Bill, 1921–1956', *Law & Society Review*, 3, 2/3, Special Issue Devoted to Lawyers in Developing Societies with Particular Reference to India (November 1968–February 1969), pp. 303–316.

[77] S. Hodges, *Contraception, colonialism and commerce: birth control in South India, 1920–1940* (Aldershot, 2008), pp. 48–54, 66–67. Ramesam also managed the distribution of the Madras Neo-Malthusian League's stock of contraception. Ibid. pp. 71–72.

courts had ordered her brother-in-law to pay as maintenance in arrears, a payment that amounted to Rs. 69,000. The widow contested Senneck's assessment. Citing section 14(1) of the 1922 Income-tax Act, which established that any funds received by virtue of being part of a joint family were exempt from taxation, she argued that this income had already been taxed as part of HUF property.

Senneck rejected this appeal on the grounds that Vedathanni's maintenance did not come from HUF property. He argued that 'at one time the rights of a son's wife or widow amounted to membership of the [joint] family with an interest in the family property. But modern judicial decisions have . . . modified the law as laid down in the Smriti texts' regarding women's membership of the joint family so that 'the petitioner cannot be said, on the facts of this case, to be a member of a Hindu undivided family'. If Vedathanni was not a member of a Hindu undivided family, her maintenance was not exempt under the terms of section 14(1), Senneck concluded.[78]

Demonstrating the complexity of Hindu property law as it had evolved under colonial rule, the Indian advocate employed to represent Senneck and the Revenue Board offered a very different reading of HUF membership. Undermining Senneck's argument, the advocate conceded that Hindu legal textbooks and even case law established that wives and widows could be members of a Hindu undivided family, but argued that the maintenance award was liable to taxation in spite of this.[79] Vedathanni's maintenance had not been awarded because of her membership of a joint family, he argued, because the joint family from which it came had ceased to exist with the death of Vedathanni's husband. Vedathanni's husband had died leaving only his brother and no other male heirs. Disregarding the female dependants, the advocate argued that a single coparcener alone could not constitute a joint family.[80]

Ramesam disagreed with both Senneck and the advocate. Citing two earlier cases dealing with adoption and property rights under Hindu law,[81] he argued 'that there can be a joint family with a single member

[78] [1932] AIR Mad 733–4.

[79] In his judgment Ramesam referred to Strange's *Hindu Law*, Vol. 1, p. 171; Mayne's *Hindu Law*, section 270, para. 2; G. C. Sarkar's *Hindu Law*, edn 6, p. 294; and Mulla's *Hindu Law*, p. 550, as well as to the Privy Council's decision in Sri Virada Pratapa Raghunada Deo v. Sri Brozo Kishoro Patta Deo to demonstrate that the Commissioner was misled on this point, though he acknowledged that 'this point does not require any elaboration as it is, practically conceded by the learned advocate appearing for the Commissioner'. Ibid.

[80] Ibid, p. 733.

[81] Nandan v. Sailoja [1891] 18 Cal. 385, and the Privy Council decision in Bachoo Hurkisondas v. Mankore Bai [1907] 31 Bom. 373.

provided there are other members entitled to maintenance from the estate'. He ruled that to exempt Vedathanni's maintenance from taxation was entirely in accordance with the 'justice and purpose' of section 14(1) of the 1922 Income-tax Act, which he read as a clause designed specifically to safeguard the financial interests of the Hindu widow. Asked whether an adopted son's income was also exempt from taxation, Ramesam answered in the negative. He did not receive his income because he was a member of a joint family. His income came from 'business or investment' of the family funds.[82] In Ramesam's eyes, 'The language of . . . section [14(1)] is strictly applicable only to widows of deceased coparceners, to disqualified heirs and maidens in the family receiving maintenance.' Vedathanni's case demonstrated how powerful the figure of the economically dependent Hindu widow had become for debates about 'modern' economy, at both the household and the national level.

Ramesam's verdict had far-reaching consequences for the administration's income tax policy. His ruling suggested that the HUF was not directly coterminous with the Mitakshara coparcenary but in fact related to family wealth defined in a broader sense to include female dependants. This ruling not only denied Madras income tax officers a sizeable windfall from Vedathanni, it also established a legal view of the HUF that was not the high-earning lucrative unit that tax officials had originally sought to enshrine in legislation. Ramesam's ruling defined a HUF that comprised not simply male property owners, or income accumulators, but also 'unproductive' dependants who could draw from this pool of capital without financial penalty. Away from Madras, other tax commissioners expressed alarm about what the ruling meant for cases pending in their own provinces.[83] But the same view was upheld by the Nagpur High Court in 1934[84] and the Bombay High Court a year later.[85] The legal debate was eventually resolved in 1937 by a judicial committee appointed to deal with a number of appeals on this issue. The committee ruled: 'The phrase "Hindu undivided family" is used in the statute with reference, not to one school only of Hindu law, but to all schools; and their Lordships think it a mistake in method to begin by pasting over the wider phrase of

[82] This point had been raised by the advocate appearing on behalf of the Revenue Board. Vedathanni's sister-in-law, the wife of her husband's brother, had been one of the plaintiffs in Vedathanni's initial case to claim her maintenance. [1932] AIR Mad 734.

[83] Letter from Wali Mohamed, Tax Commissioner of the Central Provinces, to Sir A. Tottenham, Member of the CBR, 23 October 1932, NAI, CBR, Income Tax Dept, R-Dis (1933), F. 691-I.T.; circular from CBR to all Commissioners of Income tax, 24 November 1937, NAI, CBR, Income Tax Dept, R-Dis (1937), F. 558-I.T.

[84] Nath Sao v. Commissioner of Income Tax C.P. and Berar (1934), 2 ITR 468.

[85] Commissioner of Income Tax, Bombay v. Gomedalli Lakshminarayan [1935], 3 ITR 367; 8 ITC 239; 59 B 618; [1935] AIR Bom. 412; 37 Bom. L.R. 69.

the Act the words "Hindu coparcenary" all the more that it is not possible to say on the face of the Act that no female can be a member.'[86] Ironically, therefore, the administration's attempts to make the term HUF applicable to all Hindus, rather than to Mitakshara coparcenaries alone, served to undermine the vision of the HUF that many tax officials had hoped to endorse – as comprising only income-generating male members. It was against the backdrop of this legal debate that Dr G. V. Deshmukh, a medical doctor rather than a lawyer, from the Bombay Presidency, introduced his Hindu Women's Rights to Property Bill.

Deshmukh gave notice to the Government of India of his plan to move his Bill in February 1935, several years after Vedathanni's case but before the legal question of a widow's status within the HUF had been resolved by the colonial administration. At this point, work on the revised Government of India Act was in its final stages, though it would take another two years for the first elections to be held under the new constitution, as officials sweated over the accompanying restructuring of federal finances. Seeking to consolidate the law regarding Hindu women's rights to both individually acquired and joint family property, Deshmukh presented the Bill firmly in terms of raising women's status in Hindu law.[87] Alongside Ramesam's ruling in Vedathanni's case, his Bill appeared to affirm Indian nationalist claims that Indians, rather than the colonial administration, were the main driver of social reform.[88]

Deshmukh set out his main aim in the third section of the Bill: 'No woman because of her sex shall be excluded from the right of owning property gained by inheritance, on partition, settlement, gift or present, or be deemed to be disqualified from having a right in property.' To this end, the Bill abolished women's limited, or lifetime, estates, making women absolute owners of inherited property. Furthermore, near female heirs – the wife, mother, daughters and widowed daughters-in-law of a dead man – were elevated in the order of succession, to occupy the same position as a son. The Bill did not seek to break up the joint family estate but it did bring an end to the all-male composition of the coparcenary. If a man had no sons, both his self-acquired and his joint family property would pass to his widow and his daughters, and not to his coparceners, so that they would form a joint family unit. If he did have one or more sons, they would share the estate with their mother and other close

[86] Kalyanji Vithaldas v. The Commissioner of Income Tax [1937], 39 Bom L.R. 374.
[87] Sturman, *The government of social life in colonial India*, pp. 218–221.
[88] This claim had much to do with the passage of the Sarda Act. M. Sinha, 'The lineage of the "Indian" modern: rhetoric, agency and the Sarda Act in late colonial India', in A. Burton (ed.), *Gender, sexuality and colonial modernities* (London, 1999), pp. 207–220.

female relatives, rather than with distant male coparceners. In these cases female heirs were not permitted to partition the joint family estate as long as any of the sons were alive.[89] Whereas Jayakar had positioned the conjugal family unit outside the HUF, linking it to a man's individual estate, Deshmukh sought to place the conjugal family within the wider structure of the joint family, in line with the recent High Court rulings.

The Bill won strong backing from the then Law Member, Sir Nripendra Nath Sircar, a Hindu, former justice of the Calcutta High Court, who urged his government colleagues to actively support Deshmukh's measure, rather than adopt the attitude of benign neglect that usually characterised the administration's handling of private reform legislation. In 1930, Sircar's predecessor as Law Member, Sir B. L. Mitter (also a Hindu lawyer), had explained to the house: 'It is a fixed principle of the Government of India not to interfere in any way whatsoever with the personal laws and customs of the different peoples of India unless they have very strong and conclusive evidence that the change is desired by the people who are affected.'[90] While it was right for the government to reject private members' Bills if 'opinion of the community is adverse', Sircar argued, 'since the last two years a wide and persistent agitation is going on in favour of improving the position of women under Hindu law'. In the case of Deshmukh's Bill in particular, Sircar noted that he had 'received more than 50 telegrams from different associations supporting the Bill'. Surely this was evidence of the fact that the Hindu community supported reform? On the basis of the government's own policy of religious neutrality, he concluded, it should support Deshmukh's proposal.[91]

The matter was referred to Tennant Sloan, Secretary to the Government of India, Home Department, who agreed that Sircar had raised 'a question of importance and difficulty'. He accepted that the current method of dealing with 'progressive social legislation affecting religion' was 'unsatisfactory'. Government could not promote these Bills without flouting its policy of religious neutrality, but 'on the other hand, non-official Bills have little chance of being passed into law without some Government assistance'. One way round the charge of religious bias, he suggested, was for the government to offer help to other, non-Hindu

[89] A Bill to amend the Hindu Law governing Hindu Women's Right to Property, NAI Home Department F.36/X/1935 – Judicial.

[90] In response to calls from legislators to reform the Special Marriage Act, Mitter had in fact taken this phrasing from an earlier government statement responding to calls to back social reform legislation in 1911. F.820/1930 – Judicial, cited in note by R.B.D., 7 August 1936, NAI, Home Department F.36/17/1935 – Judicial.

[91] Demi-official letter from the Hon'ble Sir Sircar, Law Member to Sir Henry Craik, Home Member, 2 April 1935, NAI, Home Department F.36/X/1935 – Judicial.

legislators seeking to reform their personal legal systems through private legislation. Sloan calculated that, at that moment, there were no fewer than fifteen private Bills awaiting introduction to the legislature. Of these, a considerable number dealt with Hindu law,[92] but there was also a Burmese members' Bill for the restoration of Budh Gaya temple to Buddhists and a Bill brought by a Muslim representative, H. M. Abdullah, to apply Shariat law as the basis of the Islamic personal law governing Indian Muslims.[93]

Abdullah's Shariat Bill was more closely tied to a wider drive to consolidate a single Islamic identity in the north-western parts of India at this time than to debates about Muslim property law per se. Legislators in the North West Frontier Province (NWFP) had recently introduced an Act to abolish the customary and tribal legal systems in place and apply Islamic Shariat law to all Muslims in the province. The particular social character of the NWFP had led colonial officials to give priority to custom rather than Islamic texts in their administration of family affairs in this province.[94] The Bill established that Muhammadan law, as it had come to be defined by this point, would now form the basis of all civil and religious cases in the NWFP, as it did in other provinces.[95]

Abdullah himself hailed from Punjab, a region which was also governed by its own particular legal structure. In establishing control over Punjab, colonial administrators had differentiated between 'agriculturalist' Muslims, who were governed according to Punjabi customary law, and urban-based Muslims, who adhered to the Anglo–Muslim law applied elsewhere.[96] A member of the All India Muslim League, rather than the ruling, 'agriculturalist' Punjabi Unionist Party, Abdullah was clearly critical of this legal division that both drove a wedge between rural and urban Muslims and facilitated the construction of a cross-communal 'agriculturalist' alliance

[92] These included two Bills to improve the position of a son's widow in the order of succession under Hindu law, moved by Rai Harbilas Sarda and Rai Bahadur Lal Baij Kishan; a Bill introduced by Amar Nath Dutt to remove doubts about the rights of grandsons and great-grandsons to inherit property under the Dayabhag; a private members' Bill introduced by another representative, Lalchand Navalrai, to amend the Child Marriage Restraint Act so as to prevent and penalise people marrying in Indian states in order to avoid its provisions.

[93] Note by T. Sloan, 13 April 1935, NAI, Home Department F.36/X/1935 – Judicial.

[94] Akbar S. Ahmed, *Pukhtun economy and society: traditional structure and economic development in a tribal society* (London, 1980), especially pp. 50–51, 105–111; the Bill was eventually passed in the NWFP as Act VI of 1935.

[95] Section 2 of the NWFP Act applied 'Muslim Personal Law' in all questions regarding 'succession, special marriage, property of females, betrothal, divorce, dower, guardianship, minority, bastardy, family relations, wills, legacies, gifts or any religious usage or institutions including waqf'.

[96] Gilmartin, *Empire and Islam*, pp. 13–18; Dewey, 'The influence of Sir Henry Maine on agrarian policy in India', pp. 353–375.

that kept Muslims like himself out of power in the province.[97] His call to extend the NWFP Bill to create a uniform legal system for Muslims throughout India thus reflected both the all-Indian politics of the Muslim League and Abdullah's more particular provincial interests.

The Bill affected Muslim women's property rights in ways that suggested it to Sloan and his colleagues as an 'equivalent' to Deshmukh's measure. Abdullah justified the repeal of custom and the introduction of Shariat law in its place on the basis that it would improve the legal standing of Muslim women:

> The state of Muslim Women under customary law is simply disgraceful. The Muslim women's organisations have condemned customary law as it adversely affects their rights and have demanded that the Muslim Personal Law (Shariat) should be made applicable to them. The introduction of the Muslim Personal Law will automatically raise them to the position to which they are naturally entitled.[98]

While property rights for widows were at the heart of arguments about a 'modern' Hindu legal system, Abdullah suggested the abolition of custom was needed to construct not a 'new' system of Muslim law but a more enlightened and truly Islamic legal system.

After much grumbling, members of the central Executive Council agreed to support Deshmukh's Bill at a meeting held in December 1936, just as the first elections under the 1935 Government of India Act were under way.[99] Government officials had expressed some anxiety that the fairly radical and far-reaching reform of women's property rights set out in Deshmukh's Bill could generate opposition among orthodox sections of Hindu society. In the end, however, the fiscal reforms that accompanied the 1935 Government of India Act did much to secure widespread legislative support for both Deshmukh's and Abdullah's Bills.

Looking for new taxpayers: wives and property or wives as property?

The revised Government of India Act was passed in August 1935, but difficulties relating to federal finances meant that the new constitution did not come into force immediately. After the problems of the Meston

[97] N. G. Barrier, 'The formulation and enactment of the Punjab Alienation of Land Bill', *Indian Economic and Social History Review*, 2, 1 (1964), pp. 145–165; I. Talbot, *Punjab and the Raj, 1849–1947* (New Delhi, 1988); Gilmartin, *Empire and Islam*, pp. 169–174.

[98] Statement of Objects and Reasons for a Bill to Make Provisions for the Application of the Muslim Personal Law (Shariat) to Muslims in British India, 27 March 1935. NAI, Home Department, F.28/34/1938 – Judicial.

[99] Meeting of the Executive Council held on Wednesday 2 December 1936, NAI, Home Department F.36/X/1935 – Judicial.

Settlement it was decided that provincial governments would retain control over land revenue but that income tax revenue would be shared between the centre and provinces. How to divide this revenue between the central and provincial governments remained a source of contention, however, and it was decided to pass the matter to a committee of experts, headed by Sir Otto Niemeyer, former Director of the Bank of England.[100] Implementation of the new constitution was to wait until this committee had reported its findings.

Niemeyer argued that, to provide long-term financial security for the new state structure, any settlement needed to redistribute income tax revenue and also provide both central and provincial governments with incentives to expand this source of income. With this in mind, he proposed a formula for income tax distribution that took account of population size and business activity in each province.[101] This became the basis of the new financial settlement that was inaugurated along with the new constitution on 1 April 1937, the beginning of the new financial year. The settlement very much affirmed the significance of income tax revenue for representative, devolved government.

Niemeyer's emphasis on the importance of expanding income tax revenue prompted the Government of India to establish yet another committee to look into ways of consolidating and expanding taxation revenue. Submitted almost a year after Niemeyer's proposals, the report of the Income Tax Enquiry Committee (IEC) focused heavily on enforcement and methods of collection to squeeze as much revenue as possible from the existing income tax system. 'Our attention has been drawn to the extent to which taxation is avoided by nominal partnerships between husband and wife and minor children', the Committee stated in its report. If a businessman claimed his wife was a partner in his business he would be assessed on only half his income even though, in practice, he exercised full control over his wife's property, and therefore over the business's profit in full. This discrepancy was particular to Indian law. The English Income Tax Act of 1842 had established that, while women could be taxed separately on profits accruing from any property they held in their own name, the profits of any married woman living with her husband shall be deemed the profits of her husband and shall be charged

[100] Niemeyer (1883–1971) held official posts in the British Treasury and Bank of England during the interwar period. He was also involved with Commonwealth and League of Nations financial politics and travelled to Australia in 1930 to assess and report on the Dominion's financial status.

[101] The details of this complex formula are set out in Thomas, *The growth of federal finance in India*, pp. 416–419.

in the name of the husband for taxation purposes.[102] Bending to pressure from British colonial civil servants, the Indian Advocate General had, in 1886, ruled that the wife of a European British subject in government service could claim a certificate of tax exemption on income from savings and securities, provided that this did not amount to more than Rs. 1,000 a year and that she had no other independent sources of income. Two years later, the Government of India had been forced to concede that this ruling could apply also to the wives of government officers who were not European, though not to those of Hindu civil servants, because of the dominance of joint property rights among the latter.[103] By 1936, the IEC reported: 'In some parts of the country, avoidance of taxation by this means [of falsely dividing income between a husband and wife for taxation purposes] has attained very serious dimensions.'[104]

This claim appears to have been based rather more on suspicion, or curiosity, about Indian family finances than on firm evidence. The sale of gold ornaments triggered by the 1931 sterling crisis had demonstrated vividly the link between conjugality and capital. At the same time, the sales aroused concern among officials about how much they knew about Indians' private finances. As Schuster's memoirs demonstrate, government officials had been caught unawares by the sudden outpouring of private gold. The global expansion since the First World War of economic government by statistics meant that the Government of India possessed data about gold imports into India during the 1920s, but not about where this gold had ended up.[105] The income tax reforms meant that, by the early 1930s, the administration had amassed a considerable body of information about the income of Indian businessmen, professionals and merchants. Yet much of the gold that was sold in 1931 had not appeared in this data. The fact that agricultural income was excluded from income tax meant that peasant earnings did not appear in the Central Board of Revenue's annual reports. Government of India officials did not have the constitutional power, or the incentive, to look into peasant family finances: the 1919 Government of India Act had granted agricultural taxation to the provinces, while rural poverty in the wake of the gold sales meant that to try to monitor rural family wealth

[102] Chapter 35, section 45 of the English Income Tax Act, 1842, cited in a letter from the Income-tax Collector of Poona to the Government of India, 14 December 1916. NAI, Sep. Finance Dept, Rev A., April 1918, Nos. 168–201.

[103] Income-tax Collector of Poona to the Government of India, 14 December 1916. Ibid.

[104] Government of India, 'Income Tax Enquiry Report, 1936' (1937), Chapter III, section 1, p. 19.

[105] Shirras, 'Gold and British capital in India'.

now would be to close the stable door long after the horse had bolted. At the same time, the franchise reform and the introduction of a wifehood qualification meant that the administration could access more easily the information it needed to collect taxes on the basis suggested by the IEC. In this way, the new data for representation opened new possibilities for further revision of the indian tax base.

The IEC suggested the inclusion of a clause in the Income-tax Act to make a wife's income the property of her husband for purposes of taxation. As with the HUF, this would place the couple's income in a higher tax bracket than if the husband's and wife's incomes were assessed separately. The committee also proposed that any income accruing to a minor child would be considered part of his father's income for tax assessment.[106] To bring Indian income tax law into line with taxation practices in Britain, the IEC also suggested the introduction of a system of tax allowances, proposing that a wife be allowed to retain, untaxed, the first Rs. 500 of her income.[107]

These changes were directed at non-Hindu Indians, but the IEC also had suggestions for changes in the way in which Hindu families were assessed. Committee members explained that, in the course of their investigations, they had received numerous applications from Hindu representatives calling on tax collectors to consider the number of family members when calculating a Hindu family's tax bill.[108] The committee presented a radical way to address these concerns. Where a joint family comprised more than one, married adult male member, income should be divided into two parts for tax assessment, to create two smaller, more nuclear-like family units. Tax would then be levied on this smaller unit's collected income – not only profit from the ancestral estate but also the individual income of all family members, including wives. If women and other financial dependants could preserve the tax rewards received by a HUF, as Justice Ramesam had argued, they could also contribute to the family's tax payments. At the same time, the Committee noted that breaking down the HUF in this manner could have a negative effect on

[106] 'Proposed amendments to Indian Income-tax Act 1922 arising from IEC's 1936 Report', appended to note by M. P. Kapadia, 20 December 1937, NAI, CBR, Income Tax Department – R. Dis. (1937), F.358-I.T.

[107] 'Income-tax Enquiry Report, 1936', Chapter III, section 1, p. 19. On this aspect of British income tax law see A. M. Carter, 'Income-tax allowances and the family in Great Britain', *Population Studies*, 6, 3 (1953), pp. 218–232.

[108] Representatives proposed a range of different formulae to calculate who should be included as family members for this purpose, with suggestions ranging from dividing tax bills between only male adult relatives to the inclusion of all family members, male and female, adults and minors. 'Income-tax Enquiry Report, 1936', Chapter III, section 3, p. 24.

revenue levels. To deal with this, the Committee proposed the abolition of the HUF's special super tax rate.[109] This effectively dissolved the HUF into a series of smaller, conjugal units, which were to be taxed like married couples from non-Hindu communities. Indeed, IEC members argued that their proposed reforms would remove the problem of the HUF's peculiarity in terms of taxation as all Indian married couples, not simply Hindu families, would be considered to be 'joint' from the point of view of taxation. Focusing on the development of a more uniform income tax policy, the committee noted that its reforms would 'bring the taxation of families other than JHF [Joint Hindu Families] more in line with that of the latter'.[110]

Both Hindus and Muslims reacted angrily to the IEC's proposals. Members of the Indian business community were particularly vociferous in their responses. Merchants' organisations and chambers of commerce based in Cawnpore, UP opposed the IEC's proposals on the basis that they contravened the Hindu Gains of Learning Act.[111] After considerable struggles, the Hindu Gains of Learning Act had secured stronger individual control over self-acquired property for Hindu men in this region who were not willing to give it up easily. Those interviewed in other regions argued that the proposal contravened not simply a single legislative measure but the whole Hindu legal system. Members of the Andhra Chamber of Commerce argued that the Income Tax Enquiry 'Committee fails to recognise certain fundamental principles of Hindu society'; representatives of the Millowners Association of Ahmedabad argued that the proposals stood opposed to the views of Hindu jurists, who held 'certain categories of woman's property not only as separate but also as sacred'. Members of the Indian Chamber of Commerce, Bengal concurred and on this basis 'urge[d] that a HUF should continue to be treated as a separate entity which in fact and under the law and by custom prevailing from time immemorial it is'.[112]

Muslim representatives made the same argument about their own religious personal law. Though the amalgamation of a husband and wife's income might be in line with English property law, they argued, it directly contravened Muslim personal law under which women held property on an individual and absolute basis. 'Muslim women are independent as per Islamic Law', the spokesman for the Koothanathur

[109] Ibid, p. 25. [110] Ibid, p. 24.

[111] Views of the Upper India Chamber of Commerce, Cawnpore, Merchants' Chamber of UP, Cawnpore and the UP Chambers of Commerce, Cawnpore, 'Précis of opinions on the Report of the Income Tax Enquiry Committee collected by the Government of India', NAI, CBR, Income Tax Department – R. Dis. (1937), F.358-I.T.

[112] Ibid.

Muslim League, Tangore told the government, 'and are entitled for ancestral properties and have right to dispose and invest in profitable enterprises [sic]. Such incomes are theirs and should be exempted from taxation and should not be included with her husband's income and thus subjected to taxation.' The head of the Bengal Muslim Chamber of Commerce also opposed the proposal on the grounds of religious law. 'In Mohammadan law the individuality of a minor or wife and their right to possess or own property and income is expressly provided for as indisputable and inalienable,' he explained, 'and the combining of such income with the income of the father or husband would be a denial of such lawful right.'[113]

The IEC's proposals did much to generate support for legislative reform of women's property rights. Legal recognition of Indian women's individual property rights would make it much harder for tax officials to assess the married couple as a single unit, and therefore at a higher tax rate, than if the husband and wife were assessed separately. Under consideration by a select committee when the IEC released its report, Deshmukh's Bill became a critical weapon in the fight against 'joint' couple taxation. When it was first circulated, a number of legislators and local officials had objected to the Bill's proposal to give daughters an absolute share in their fathers' estates. In the wake of the publication of the IEC's report, the select committee opted to remove these clauses, so that the Bill granted property rights to Hindu widows only. These changes satisfied conservative critics of the Bill while still undermining the IEC's view of Indian wives as economic dependants. Deshmukh's measure was passed as Act XVIII of 1937 in April 1937, only a few months after the inauguration of the new constitution.

The IEC's report also added new impetus for the campaign to pass Abdullah's Shariat Application Bill. The measure had given rise to considerable debate among Muslim representatives about regional differences in Islamic practices and the very nature of Shariat law, but in April 1937, legislators finally agreed to refer the Bill to a select committee. When the revised Bill was introduced for discussion to the legislature, Mohammad Ali Jinnah, leader of the Muslim League, stepped in to guide the measure swiftly and effectively onto the statutes.[114] The debate took place after Schedule VII of the 1935 Government of India Act had come into force, meaning that the Shariat Bill could not be applied to agricultural land, which, under the Schedule, was a subject on which only provincial

[113] Ibid.
[114] *LAD*, Vol. V, No. 11, 16 September 1937, NAI, Home Department, F.28/34/1938 – Judicial.

assemblies could legislate.[115] This made it easier for Jinnah and other Muslim representatives to secure support for the Bill from the Bengali and Punjabi landed elites, on the basis that their agrarian interests would not be affected by the measure.[116]

Following the passage of the Hindu Married Women's Rights to Property and Shariat Application Acts, finance officials dropped the IEC's proposals relating to married couples and Hindu families, both of which ran counter to the ideas underpinning the new measures. In many ways this appeared to mark a victory for the Indian income tax-paying classes. Both Hindu and Muslim taxpayers had circumvented proposals that could have forced them to pay a greater proportion of tax on their income. The new Acts provided these groups with important legal weapons to defend themselves against similar kinds of financial attacks by the administration in the future. But the administration had not lost out entirely.

While the 1937 Acts prevented finance officials from taxing couples in a more lucrative fashion, they also brought into existence a new group of property holders – Indian women. Up to this point, the lack of legal recognition of women's property rights had prevented the administration from taxing them on their income or wealth. This was no longer the case. Securing property rights for women, the new acts thus created the possibility for women to enjoy political representation on the same basis as Indian men in the future.

Conclusion

By the end of 1937, a new kind of female subject had emerged within the Indian legal system. The individual property rights of Muslim women and Hindu widows were now firmly enshrined in law and Indian women had become an established section of the electorate. These important changes were made possible by the efforts of women leaders and the male legislators who supported them, but they had also been deeply informed and shaped by shifts in colonial fiscal policy at both the macro and micro levels. Indian women's political and legal rights had been 'purchased' in exchange for acceptance of greater state scrutiny of their economic activities.

[115] The terms of Schedule VII of the 1935 Government of India Act were much discussed in relation to the applicability of the Hindu Women's Right to Property Act: the Legislative Assembly passed the Hindu Act in February 1937, *before* Schedule VII took effect, but it was formally accepted by the Council of State on 6 April, by which time the terms of the Schedule were legally established. [1941] 2 MLJ 12 (FC) 13.

[116] Nair, *Women and law in colonial India*, p. 193; Gilmartin, *Empire and Islam*, pp. 171–174.

This nexus between political and economic subjecthood also helps to explain the eventual collapse of Indian women's organisations' demands for a non-communal, all-Indian electorate for women voters. The Communal Award created strong political incentives for Congress leaders to turn away from women leaders' demands for a united electorate and to consolidate a non-Muslim political majority, as Mrinalini Sinha has discussed.[117] But the very structure of religion-based property laws did much to undermine the possibility of a single, all-India political identity for women. Both the fiscal structure of the 1935 Government of India Act and the franchise terms that accompanied it sealed the link between property rights and political power. Property rights could secure political influence for women, but this required women to accept the religious divisions of Indian personal law, divisions which, because they secured the HUF's special tax status and helped to construct an image of Islamic unity, powerful Hindu and Muslim male politicians had no desire to remove. Indian women's organisations faced a choice: to accept property rights and religion-based politics, or to take on and challenge the economic interests of both the colonial administration and the male Indian political elite.

The 1937 Acts also had important repercussions for the legal and political status of Hindu and Muslim law in the longer term. The Muslim Personal Law (Shariat) Application Act seemed to affirm the view of Muslim law presented in the debates about the 1913 Wakf Act as a legal system that operated according to its own internal logic and legal authorities. The Hindu Women's Right to Property Act did quite the opposite, using statute to define more clearly the rights of Hindu wives and widows within their husbands' immediate and wider families. Furthermore, complaints from the High Courts about ambiguous and problematic clauses in the Act prompted its revision a year later, forcing the legislature to discuss the real aims and objectives of the measure once again.[118] The Act therefore drew Hindu legislators and property owners into a closer relationship with state structures, even as it offered them some protection from the financial demands that these structures had created. For better or worse, the interests of the Hindu income tax-paying classes were becoming increasingly bound up with the financial interests of the Indian state in a manner that was not replicated among Indian Muslims or other non-Hindu communities.

[117] Sinha, *Specters of Mother India*, pp. 232–247.

[118] See Statement of Objects and Reasons for a Bill to Amend the Hindu Women's Right to Property Act and 'Extract from Legislative Assembly Debates', Vol. II, No. 14, 18 March 1938, NAI, Home Department 364/1937 – Judicial.

4 The Hindu Code Bill: creating the modern Hindu legal subject

The 1940s marked a major turning point in the debates about personal law reform. In January 1941, the Government of India appointed a committee of four Hindu jurists and legal experts to look into and advise on the condition of women's property rights under Hindu law. The Hindu Law Committee, as it came to be known, submitted its report six months later. In it, the Committee expressed concern about the impact of recent piecemeal reforms, including the 1937 Hindu Women's Right to Property Act, on the wider body of Hindu law. To remove the confusion and legal ambiguity these measures had wrought, the Committee called on reformers to focus their energy on the 'whole field' of Hindu law rather than on particular branches. 'We ourselves think that the time has now arrived to attempt a code of Hindu law', Committee members explained:

> We do not suggest that all parts of the law should be taken in hand at once. The most urgent part, namely the law of succession (including, of course, women's rights in that connection), may be taken up first; then the law of marriage; and so on. After the law relating to each part has thus been reduced to statutory form, the various Acts may be consolidated into a single Code. We suggest this as a reasonable compromise between piecemeal legislation and wholesale codification.[1]

The Government of India agreed to this proposal without opposition and in the late summer of 1941 the Hindu Law Committee began work on a Hindu Code Bill.

From the end of the First World War, colonial administrators had shown increasing interest in the law governing Hindu property relations, while Hindu representatives had used their legislative power to intervene in their personal legal system with growing regularity. But none of these developments had suggested that codification was either a necessary or desired goal. What prompted this somewhat sudden shift in the

[1] *Report of the Hindu Law Committee* (Delhi, 1941), p. 11.

discussions about Hindu law, from reform in a general sense to codification specifically? And why, in the middle of the Second World War, did a colonial administration that had long been committed to a policy of non-intervention in religious matters, consent to undertake such a complex and controversial project as the wholesale codification of the Hindu personal legal system? For this was most certainly a government-led project. As its critics were later to point out, there was no grass-roots demand for a Hindu Code Bill: the Code was drawn up by non-elected jurists, working independently of the legislature, with elected representatives and members of the public offered the chance to respond only in the later stages of the drafting process.

This chapter argues that, though it grew out of the earlier debates about Hindu law reform, the government-sanctioned Hindu Code Bill project was not the obvious end point of a teleological process of legal policy but a somewhat surprising outcome of the confluence of diverse interests and ideas at a particular moment in time. The outbreak of the Second World War, and the fiscal pressures that accompanied the conflict, provided the immediate impetus for the colonial administration's decision to support legal codification. Alongside further reform of income tax laws, codification of Hindu law offered the colonial administration a means by which it could clearly establish Hindu property laws so as to allow officials to pursue rigorous tax collection without fear of the kind of judicial intervention that had marked Vedathanni's 1932 case against the Income Tax Department, discussed in the last chapter. But the specific terms of this government-commissioned codification project, that is the particular emphasis on improving Hindu women's legal rights, must be located within the context of legislative debates about law reform that were triggered by the passage of the Shariat (Application) and Hindu Women's Right to Property Acts in 1937.

While the Government of India's interest in codifying Hindu law was shaped by wartime fiscal pressures, by 1941 many Hindu legislators had found their own reasons for supporting a Hindu Code Bill. Looking at the interplay of Hindu and Muslim reform debates between 1937 and 1941, the first part of this chapter examines the ways in which debates about the relationship between law reform, women's rights and religious practice among different groups of Indian Muslims triggered considerable soul searching among Hindu legislators about the state of gender relations under their own personal legal system. It shows how the debate about the Shariat Act produced what would prove to be a temporary legislative alliance of religious and 'secular' Muslim groups that gave rise to a view of Muslim law as more progressive and 'women-friendly' than Hindu law. The 'modernity' of Hindu law had always been of central

importance to the interwar reform debates, but many Hindu male legislators responded to the new Muslim law Acts in terms that emphasised women as conjugal partners, not simply economic dependants, a move that won much support from women's representatives and organisations.[2] Hindu legislators' support for codification, a form of law that had long been celebrated by colonial administrators and Hindu reformers, such as Hari Singh Gour, for its progressive, modern nature, was very much located within this context.[3] On the eve of the Second World War, this shift towards codification reframed the debates about Hindu law reform in relation to a notion of legal modernity that had been produced through the structures of colonial rule, at precisely the time when these structures were undergoing profound transformation.

Until the outbreak of war, the issue of law reform remained a relatively secondary issue within Indian politics, attracting the attention of only a select reform-minded few but largely ignored by the Congress leadership. Viceroy Linlithgow's declaration of Indian commitment to the British war effort in September 1939 had important consequences for the political prominence of social reform issues, however. Indian National Congress representatives resigned their legislative seats en masse in protest at the Viceroy's failure to discuss his statement with elected representatives, returning to a position of non-cooperation with the administration.[4] This left non-Congress legislators, from whose ranks many of those who had supported Hindu law reform in the 1920s and 1930s were drawn, in a position of greater political influence. The decision to draw up a Hindu Code Bill, which would both clarify Hindu law and reform Hindu women's rights, reflected a somewhat fragile union of the rather different interests of colonial finance officials on the one hand and the new wartime influence of reform-minded Hindu legislators on the other.

At the same time, the formation of the Hindu Law Committee seemed to separate the issue of Hindu law reform from the colonial administration itself. In moving discussion about reform outside the legislature, the Government of India distanced itself and the assembly from these matters. Following Congress's boycott of the legislatures, and Gandhi's

[2] AIWC papers, F.37/1937–41; R. Nehru, *Gandhi is my star* (Patna, c. 1950), especially pp. 2–13; Ray, *My Reminiscences*, pp. 54–57; Basu and Ray, *Women's struggle*, pp. 61–63; Sturman, *The government of social life in colonial India*, pp. 210–213.

[3] Gour, *The Hindu Code*; see discussion in Chapter 1 and also D. Skuy, 'Macaulay and the Indian Penal Code of 1862: the myth of the inherent superiority and modernity of the English legal system compared to India's legal system in the nineteenth century', *Modern Asian Studies*, 32, 3 (July, 1998), pp. 512–557; Kolsky, *Colonial justice in British India*, Chapter 2; Sturman, *The government of social life in colonial India*, pp. 18–24.

[4] V. P. Menon, *The transfer of power in India* (Calcutta, 1957), Chapters 3 and 4.

individual satyagraha campaign of 1940, government officials may have hoped that Hindu subjects would accept legislation drawn up by Hindu lawyers rather than by a legislature from which the Congress were absent.[5] In the longer term, this 'Indianisation' of the Code Bill project was to have important implications for the way in which Hindu law reform was seen after independence.

The final part of this chapter looks at how using state apparatus to restructure Hindu law allowed Hindu representatives to stress the compatibility between Hindu law and the 'modern' legal systems that structured state power in India at a moment when British officials were beginning to discuss full devolution of political authority in the subcontinent. The rhetoric of 'secular' and 'modern' government which leaders of the Hindu-dominated All-India National Congress used to assert their claims to power against the Muslim League seemed to further affirm the 'secular' and 'modern' character of 'Hindu' politics and, by extension, Hindu law and the Code Bill. As this last section explores, independence and partition did not transform the structure or rhetoric of the pre-war debates about personal law, but they did provide a very different context for these discussions, a context which gave new political significance to the differences between Hindu and Muslim law reform.

Women, modernity and codified law: Hindu and Muslim law reform, 1937–1941

The passage of the Shariat Application and Hindu Women's Right to Property Acts triggered a surge of legislative interest in the question of personal law reform, much of which focused specifically on the rights of Indian women. Questions about women's property rights had already featured prominently in the debates about law reform, and the passage of the two major reform Acts of 1937 in particular, but between 1937 and 1939, questions about Indian women's conjugal rights also began to attract greater legislative interest. This shift in emphasis among reformers was not so much a 'natural' progression from discussions about property rights as the product of political dynamics and alliances that arose out of the particular ways in which Hindu and Muslim legislators had presented reform of their respective legal systems.

The previous chapter looked at the ways in which Hindu and Muslim reformers used quite different kinds of arguments about the relationship between their personal legal system, women's rights and legal

[5] J. Brown, *Gandhi: prisoner of hope* (New Haven, London, 1989), pp. 350–351; K. Tidrick, *Gandhi: a political and spiritual life* (London, 2006), pp. 292–294.

'modernity' to defend and support the Hindu Women's Rights to Property and Shariat Application Acts.[6] A significant number of Hindu reformers accepted the basic parameters of colonial theories of legal evolution, arguing that reform of Hindu women's legal rights was needed in order to 'modernise' Hindu law and society, a process which was understood as an 'advance' away from religion and past practices. The debate about the Shariat Act had been framed in quite different terms, however. Supporters of the Shariat Act drew on and reaffirmed a view of law and rights that strongly resembled the vision of 'modern' or 'developed' society that was celebrated in Maine's legal theory and colonial arguments about a people's fitness for self-rule, but argued that, for Indian Muslims, this social ideal was best achieved through an emphasis on Islamic scripture. In moving the measure, H. M. Abdullah had celebrated the 'social advances' it brought, arguing that it gave greater recognition to Muslim women's legal rights than the system of Muslim personal law upheld by the colonial courts.[7] Moulvi Hafiz A. M. Ahmad Miran, a member of the Madras Legislative Council, hailed the Bill as a clarifying measure and argued that it would establish a 'personal law which is clear and definite [and which] can be easily administered without needless trouble or confusion'.[8] As a result, the Shariat Act seemed to endorse Ameer Ali's earlier argument that English and Muslim law developed according to very different historical trajectories.[9]

The nexus between women's rights, fitness for self-rule and religious purity in the discussions about the Shariat Act meant that, by the late 1930s, Muslim law reform had become an issue around which a diverse range of Indian Muslims could gather. Rohit De has argued that the Dissolution of Muslim Marriages Act (DMMA) of 1939, the next major reform of Muslim personal law to follow the Shariat Act, grew out of and was shaped by this particular, and historically contingent, late 1930s' view of Muslim law reform.[10] The DMMA permitted Muslim women to divorce their husbands on terms that were far in advance of those open to both Indian women of other communities, particularly Hindus who had

[6] See also Sturman, *The government of social life in colonial India*, pp. 210–222.

[7] Statement of Objects and Reasons for a Bill to Make Provisions for the Application of the Muslim Personal Law (Shariat) to Muslims in British India, 27 March 1935. NAI, Home Department, F.28/34/1938 – Judicial.

[8] Précis of opinions on the Moslem Personal Law (Shariat) Application Bill – Paper III, NAI, Home Department F.28/34/1938 – Judicial.

[9] See Chapter 1.

[10] R. De, 'Mumtaz Bibi's broken heart: the many lives of the Dissolution of Muslim Marriages Act', *Indian Economic and Social History Review*, 46, 1 (2009), pp. 105–130.

no right of divorce, and British women at the time.[11] It won support from 'secular' Muslim politicians, lawyers, Muslim and non-Muslim women's organisations, but also from more orthodox, religious Indian Muslims.[12] Many orthodox *ulama* backed the measure because they saw it as an important way to prevent female apostasy from Islam in the face of increasingly active Hindu and Christian missionary programmes, conversion from Islam being one of the only grounds on which a colonial court would permit a woman to leave her marriage.[13] Following the debates around the DMMA, De shows how, for a brief moment at least, Indian Muslims from a range of backgrounds understood the application of Islamic religious practices as something that was not simply compatible with women's rights but that would necessarily secure the latter.

Just as H. M. Abdullah had framed his Shariat Act as a measure that would restore the religious character of Muslim personal law, religious supporters of the DMMA stressed that the measure did not reflect modern legal innovation but was thoroughly in consonance with Islamic legal practices as set out under the Maliki school of Islamic law. Followed predominantly in north Africa, colonial jurists had ignored Maliki legal traditions when compiling what they understood to be Indian Muslim personal law.[14] Quazi Mohammad Ahmed Kazmi, who drew up the DMMA, responded to accusations by colonial officials and Hindu legislators that the measure contravened the terms of the recent Shariat Application Act by arguing that the Bill was in perfect consonance with the Islamic legal principle of *takhayur*, which allowed Muslims to 'pick and choose' between a selection of regulations set out by recognised jurists.[15]

De traces the way in which the diverse but fragile Muslim alliance around the DMMA eventually broke down during discussions about the administration of the new divorce rights. A key condition of *ulama* support for the measure was that cases brought under its terms would be heard by Muslim jurists only. In many ways, this demand followed the logic that had underpinned the debates about *waqf* law and the Shariat Application Act, that Muslims alone were able to know and apply 'true'

[11] Ibid, p. 106, fn. 6.
[12] Ibid, pp. 110–113, 117–120; see also Nair, *Women and law in colonial India*, pp. 194–195.
[13] De, 'Mumtaz Bibi's broken heart', pp. 113–114, 120–122; Nair, *Women and law in colonial India*, p. 195; S. Kumkum, 'Gender lines: personal laws, uniform laws, conversion', *Social Scientist*, 27, 5/6 (May–June 1999), pp. 33–34.
[14] As mentioned in Chapter 1, texts of the Hanafi school of Muslim law, most notably the *Hedaya*, supplemented with British translations of the rules of inheritance in the *Al-sirajiyah*. See Anderson, 'Islamic law and the colonial encounter in British India', pp. 170–176; Kugle, 'Framed, blamed and renamed', pp. 269–275, 281–283.
[15] De, 'Mumtaz Bibi's broken heart', p. 117.

Muslim law. The *ulama* now wished to institutionalise the religious character of Islamic law that other Muslim representatives had alluded to rhetorically to defend their own reform agendas. But they were not successful in winning support for this aim from either the colonial administration or other sections of the Muslim support base that had gathered behind the DMMA. More moderate Muslim politicians and leaders, many of whom were western-trained lawyers themselves, saw no difficulty in allowing a judge of any religion to hear a case under the Act, so long as he was properly trained in the rules and principles of modern justice.[16] Colonial officials were set against the *ulamas*' proposal, which they saw as a challenge to their own power over the administrative and juridical apparatus of India.[17]

The DMMA was eventually passed in early 1939, without the clause pertaining to Muslim judges. As a result, religious leaders were quick to dismiss the measure as 'un-Islamic'.[18] Their response to the Act did much to destabilise the connections that had emerged in the debate about the 1937 Shariat Act linking law reform with correct religious practice. The terms in which the *ulama* framed their opposition did much to suggest that 'true' Islamic practice existed independently from and was therefore not compatible with the authority of the colonial state – either its legislatures or its judiciary, presided over by judges of all religious communities.

While the outcome of the DMMA debates shut down an important avenue in the debates about Muslim personal law reform, it proved a source of considerable legislative inspiration for Hindu reformers. As the debate about the DMMA reached its climax, officials in the Judicial Department of the Government of India had received notice of no fewer than three Bills to prohibit polygamy under Hindu law, as well as a fourth, also moved by a Hindu member of the Council of State, Mr K. S. Roy Chowdhury, representing a non-Muhammadan seat in East Bengal, to restrain polygamous practices among all British Indian subjects.[19] Such proposals may well have been an attempt to affirm the modern character of Hindu law in the face of so much discussion about the progressive nature of Muslim religious law. De notes that a number

[16] Kugle sees this willingness to accept colonial legal structures as one of the defining markers that separated western-trained Muslim lawyers and *ulama* – Kugle, 'Framed, blamed and renamed', pp. 301–313 – though De suggests that the differences between these groups' attitudes towards colonial readings of Muslim law were more complex – De, 'Mumtaz Bibi's broken heart', p. 126.

[17] Ibid, pp. 123–125.

[18] Ibid, p. 126; Nair, *Women and law in colonial India*, p. 195.

[19] Note from the Judicial Department, 11 February 1939, NAI, Home Department F. 22/1/1939 – Judicial.

of Hindu legislators, including both G. V. Deshmukh and Radhabai Subbarayan, a member of the AIWC and the only female member of the Council of State (the upper house of the central legislature) at this time, praised the DMMA and expressed hope that other religious communities would follow the example set by Muslim reformers.[20] Significantly, Sir Nripendra Nath Sircar, the Law Member whose intervention was critical in securing the passage of the Hindu Women's Right to Property Act and, inadvertently, the Shariat Application Act, was less supportive. Questioning the DMMA's supporters' commitment to women's rights, Sircar argued that the measure reflected the retrograde, rather than progressive, character of Muslim law. The movers of the Act sought merely to 'clear … up mistakes and misinterpretations around Muslim law, they have not tried to advance from the seventh century'.[21]

In contrast to the debates about Muslim law and the Shariat Act, Hindu legislators commenting on Deshmukh's Hindu Women's Right to Property Act had presented Hindu law reform as a modern, state-driven innovation, not a return to ancient religious practice. The Hindu Women's Right to Property Act used statute, rather than religious scripture, to define more clearly the rights of Hindu wives and widows within their husbands' immediate and wider families. Attempts to apply the terms of the Act seemed to further consolidate the relationship between Hindu law and the apparatus of state power as complaints from colonial officials about ambiguous and problematic clauses in the Act prompted its revision a year later. Shavax Ardeshir Lal, Deputy Secretary in Delhi's Legislative Department, warned colleagues that section 3(1) of the Act, which set out that a man's 'separate property shall … devolve upon his widow along with his lineal descendants', could be interpreted so as to allow daughters to claim property from their father, even though this had been expressly rejected in the final version of the Act.[22] The proposals to give daughters a share of their fathers' estate had been deleted from the final draft of the 1937 Act following concerns that, as daughters usually moved away from their natal home on marriage, this provision could lead to the break-up of the joint family estate.[23]

The 1937 Act also raised questions relating to testamentary power over the Mitakshara coparcenary. The Act stated explicitly that it did not

[20] De, 'Mumtaz Bibi's broken heart', p. 111.
[21] *LAD*, 9 February 1939, cited in ibid, p. 119.
[22] Note by S. A. Lal, 4 December 1937, NAI, Home Department, Judicial and K.W., F. 364/1937.
[23] 'Précis of opinions on the Hindu Women's Right to Property Bill, 1937 – paper II view from Assam, Bihar, Madras, Bombay and United Provinces', NAI, Home Department, Judicial, F. 28/25/38.

affect Mitakshara joint property and dealt only with intestate succession. While Mitakshara coparcenary property was 'not capable of being disposed of by will', Lal and his colleagues feared that the Act's specific reference to this estate could suggest that it was not automatically outside the purview of intestate legislation, raising questions about will making, and thus the dissolution of coparcenary property among individual heirs. Lal called for references to 'intestate succession' to be removed from the Act and replaced with a clear statement that, 'For the purposes of this Act, a person shall be deemed to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect' – thus even if a Hindu man did make a will, it would apply only to property which could be covered by testamentary succession and not to his joint family estate.[24] These proposals met with no great opposition from non-government representatives and the amendment was passed on 18 March 1938, only a few weeks after its formal introduction, and less than a year after the 1937 Act it revised.

If clarity and greater rights for women were the hallmarks of a 'modern' legal system, these discussions did much to affirm that modernisation of Hindu law was possible only through state intervention. The Bills to enforce monogamy in Hindu law that had been introduced to the legislature by early 1939 certainly seemed to operate on this logic, and can be seen as an attempt by Hindu reformers to use state power to respond to the 'modern' legal system that Muslim representatives claimed to have established through the Shariat and Dissolution of Muslim Marriages Acts. Indeed, Radhabai Subbarayan initiated two of the three Bills, along with two Congressmen (Sri Prakasa, of UP, and M. Thirumala Rao, of Madras) and a Dalit member of the Madras-based anti-Brahmin Justice Party, N. Sivaraj.[25] These figures are likely to have supported the enforcement of monogamy for different reasons – as part of a demand for more gender-just laws, as an attempt to undermine upper-caste patriarchy or to demonstrate that Hindu leaders were just as 'modern' as their Muslim counterparts. Just as a range of Muslim interest groups had coalesced around the issue of Muslim women's divorce rights, so the debate about the Muslim Marriages Act helped to spawn alliances between different sections of Hindu representatives.

[24] The wording of the Hindu Women's Right to Property Act aside, the laws concerning Hindu will making were highly complex. See discussion on testamentary succession in Chapter 6 and G. Rankin, 'Hindu law to-day', *Journal of Comparative Legislation and International Law*, 27, 3/4 (1945), pp. 8–10.

[25] Note from the Judicial Department, 11 February 1939, NAI, Home Department F. 22/1/1939 – Judicial.

The growing backlog of Bills about Hindu polygamy prompted P. N. Sapru, a prominent supporter of Hindu law reform, to propose the formation of a committee of legal experts to draw up a single, conclusive Bill on the issue.[26] The proposal won little support among officials. Private legislation was an inevitable part of the process of political devolution, but it was not welcomed by many senior British secretaries who saw such bills as distractions from the legislature's proper work. Cecil J. W. Lillie, Deputy Secretary of the Home Department, Government of India, made his feelings about Sapru's suggestion very clear: 'The number of private bills promoted by Honourable Members on the subject of women's rights and polygamy suggest that we are legislating as fast as public opinion will follow us and are at times ahead of it. This being so, there is no advantage in setting up a committee to promote legislation when Honourable Members have themselves promoted all legislation that could reasonably be promoted.'[27]

While administrators rejected the idea of government-driven reform of Hindu marriage law, they took a more tentative position towards the debates about Hindu property law. Soon after the 1938 amendment, G. V. Deshmukh called for another revision of the Hindu Women's Right to Property Act to apply its provisions retrospectively.[28] He was supported by Kailash Biharilal, of Bihar, and N. V. Gadgil, of Bombay, who moved private bills to amend the Act in a similar fashion.[29] A week after Sapru had called on the government to investigate reform of Hindu marriage law, Akhil Chandra Datta, from Bengal, moved a bill to improve the property rights of the Hindu daughter, which, he argued, had been damaged by the changes introduced by the 1938 Act. This marked an interesting departure from the almost exclusive focus on widows' property rights that had characterised reform debates in the preceding decades. In many ways, however, Datta sought to provide for the daughter as a potential wife. Prior to the 1938 measure, an unmarried daughter, though not a widowed daughter-in-law, had been able to claim maintenance, in addition to marriage costs, from her father's estate. The 1938 Act had almost reversed the situation, Datta argued, so that a daughter-in-law could inherit her father-in-law's estate, but not the obligation to offer financial protection to his unmarried daughter. Legislators demonstrated their support for Datta's claims by proposing similar Bills of their own.[30] A little later, Deshmukh requested

[26] Ibid. [27] Note by C. J. W. Lillie, 12 February 1939. Ibid.
[28] *Report of the Hindu Law Committee* (1941), p. 21. [29] Ibid, pp. 48–49.
[30] A. N. Chattopadhyaya, also from Bengal, moved a similar private bill and G. V. Deshmukh moved the Hindu Women's Estate Bill, in addition to his proposed

leave to move yet another measure, a Hindu Married Women's Rights to Separate Residence and Maintenance Bill, to consolidate existing legislation on this matter as well as give greater security to a wife if her husband married again. The Bill made no mention of divorce rights, but it offered greater protection to Hindu wives who might feel frustrated by the differences between their own rights under Hindu law and those of their Muslim sisters. By the end of 1939, there were no fewer than seven Bills dealing with Hindu women's property rights pending consideration by the central legislature.[31]

The outbreak of the Second World War was a turning point in the discussion about Hindu law reform. The Shariat and the Dissolution of Muslim Marriages Acts had helped to bring together Hindu legislators from a range of backgrounds who supported personal law reform for diverse reasons. Radhabai Subbarayan had been able to secure support for Bills focusing directly on women's legal rights not only from the usual 'liberal' suspects, such as Deshmukh, but also from the usually more resistant Congress camp, though importantly from figures outside the Congress High Command. India's entry into the Second World War, and the Congress's subsequent decision to boycott the legislatures, set one of the most powerful political elements in this Hindu consensus firmly against the idea of state-led law reform. But the outbreak of war, and the financial demands it generated, meant that another powerful political player – the colonial administration – became increasingly interested in the debates about Hindu personal law. Indeed, questions of colonial finance played a critical role in transforming discussions about Hindu law reform into one about legal codification.

The threat of war in Europe prompted colonial officials to undertake the most significant revision of the Indian Income-tax Act since 1922. Passed as Act VII of 1939, the new Income-tax Act signified the administration's desire to secure revenue from as many sections of Indian society as possible – Europeans as well as Indians. The Act made foreign subjects who resided in British India liable to tax on their income.[32] Steps were also taken to prevent tax avoidance. The rules regarding

amendment to the Hindu Women's Right to Property Act. *Report of the Hindu Law Committee* (1941), pp. 48–49; M. Basu, *Hindu women and marriage law: from sacrament to contract* (Delhi, 2001), pp. 133–134.

31 *Report of the Hindu Law Committee* (1941), pp. 48–49.

32 'All-India Income-tax Report and Returns for the year 1939–40', Central Board of Revenue, Government of India, p. 1. Such residents were subject to tax on their British Indian incomes only, but paid at a rate to be calculated in relation to their other earnings, as part of their 'total world income', a policy which reflected the development by this point in time of sophisticated mechanisms for monitoring subjects' income in many of the more affluent countries across the world. See, for

submission of personal accounts were tightened up and tax officials were given new investigatory powers to check the details submitted. The 1939 Finance Act that accompanied the new Income-tax Act lowered existing tax brackets so that a larger number of incomes were now subject to taxation. The minimum threshold for super tax on companies was abolished, making super tax compulsory for all companies, regardless of their size or earning power. There was some attempt to offset these changes through a revision of taxation rates that introduced a 'slab system'. This brought in a more sophisticated system of banding,[33] the aim of which was to keep those at the lower end of the spectrum on the same or lower rates of income tax, while those with large incomes paid much more.[34] One sweetener that the administration offered to encourage taxpayers to cooperate with these more intrusive tax laws was a restructuring of the Central Board of Revenue's administrative and appellate functions, which included the creation of the post of Appellate Assistant Commissioner, whose sole task was to hear appeals.[35]

This honing of the tax system provided an important context for the Government of India's decision to support calls to codify Hindu law. To be effective in raising income tax levels, the new Act required clear understanding of who owned what – the revisions to the Income-tax Act would be of little use if the laws regarding subjects' property rights were ambiguous. This makes it far less surprising that, while the Government of India rejected P. N. Sapru's calls for a committee to discuss Hindu marriage law reform in February 1939, by January 1941, when the war had begun, the administration was willing to support calls for a committee to look into the growing number of private members' Bills and legal confusion surrounding Hindu women's property rights. Comprising four lawyers rather than legislators, the Hindu Law Committee was asked by the Government of India to consider the various Bills dealing with Hindu women's property rights and to consolidate their aims within a single measure, the passage of which, it was hoped, would resolve Hindu reformers' concerns and bring the legislative debates about Hindu law to an end.[36]

example, H. B. Spaulding, *The income tax in Great Britain and the United States* (London, 1927), and Daunton, *Just taxes*, especially Chapters 4 and 5.

[33] The first Rs. 1,500 of an individual's total income was tax free, while they paid 9 pies in the rupee on the next Rs. 3,500, 1 anna and 3 pies in the rupee on the next Rs. 5,000 of their total income, 2 annas in the rupee on the next Rs. 5,000 and then 2 annas and 6 pies in the rupee on all income over Rs. 15,000. *Government of India, 'Income-tax Manual, issued by authority of the central government (eighth edition) corrected up to 1st July 1939* (Delhi, 1939), p. 129.

[34] Thomas, *The growth of federal finance in India*, pp. 441, 443.

[35] Ibid, p. 442.

[36] *Report of the Hindu Law Committee* (1941), pp. 48–49.

These aims were reflected in the way in which the Code Bill project was framed. A clear code of Hindu law, drawn up by Hindu jurists away from the legislature, offered a solution to both the problem of wartime income tax policy and Hindu legislators' desire to demonstrate the modernity of their own personal legal system vis-à-vis that followed by Indian Muslims. Though it focused heavily on women's rights under Hindu law, the Code Bill project was framed in ways that paid little attention to the demands of Indian women or the organisations that claimed to represent them. Organisations such as the AIWC and WIA struggled to balance solidarity with the Congress against what many of their leaders saw as a unique opportunity to enact many of the reforms for which they had spent the last two decades struggling.[37]

The Hindu Law Committee and the impact of codification on the debates about Hindu property law

The Hindu Law Committee was chaired by Benegal Narsing Rau, a well-regarded Indian civil servant and, from 1939, a judge of the Calcutta High Court. Rau had much experience of both Hindu law and the workings of the colonial administration. Born in 1887, in Mangalore, south-western India, Rau was a member of the powerful Chitrapur Saraswat Brahmin community.[38] At school he excelled in mathematics and Sanskrit, going on to read maths at Cambridge University. In 1910 he entered the Indian civil service and was posted to Bengal. Rau was a district and sessions judge in Murshidabad from 1919 to 1920 but was soon drawn back into the service of the colonial executive, serving as the Secretary to the Assam legislative council and then as Joint Secretary to the Legislative Department, Government of India. In Delhi, he worked on a number of government-led legislative reforms, including revision of the Indian Statute Book. A year after his appointment to the Calcutta High Court, he chaired a court of inquiry to manage disputes concerning the Great Indian Peninsula Railway Company, which the Government of India had taken over in 1925. During the war he presided over several

[37] In particular see the agenda for the AIWC's Standing Committee meeting of June 1941, as well as the annual branch reports in AIWC Papers, F.48/1941–61. On AIWC members' concern about working with the Hindu Law Committee in spite of the Congress legislative boycott see correspondence between Rameshwari Nehru (Jawaharlal Nehru's aunt and then president of the AIWC) and her secretary, Urmila Mehta, in AIWC papers, F.47/1941–1951.

[38] On the history of the Chitrapur Saraswat Brahmins see F. F. Conlon, *A caste in a changing world: the Chitrapur Saraswat Brahmans, 1700–1935* (Berkeley, Calif., London, 1977).

other important government commissions, most notably the Indus Commission of 1941–1942.[39] From the point of view of government officials, therefore, Rau seemed to be a skilled and politically safe choice as head of the Law Committee. The Code Bill drawn up under his chairmanship reflected the demands of centralised, state power rather than regional and social pressures.

Rau was assisted by three lawyers: Dr Dwarka Nath Mitter, a justice of the Calcutta High Court, Jagannath Raghunath Gharpure, principal of the Law College at Pune, and R. V. V. Joshi, a pleader in the High Court of Baroda. Mitter had been a figure of some influence in the earlier debates about Hindu law reform. In 1913 he published *The position of women in Hindu law*.[40] The book charted the historic evolution of women's rights under Hindu law, arguing that before the advent of British rule, Hindu women had enjoyed considerably more legal freedom than their European counterparts.[41] Gharpure had also published a number of works on the development and evolution of Hindu law. While he upheld the ancient heritage of Hindu law, Gharpure did not believe that the sanctity of Hindu law placed it beyond legislative authority but viewed legislation as 'another source of Hindu law, inasmuch as it has effectively moulded its ordinary course'.[42] Unlike the rest of the Committee, Joshi's professional roots lay not in the colonial legal system but in the Princely State of Baroda, where he had played a prominent role in drawing up a revised state-based Hindu legal system.[43] In 1929, he served on a Hindu law reform committee set up by the Maharaja of Baroda.[44] He had also worked with the All-India Women's Conference, publishing a series of pamphlets on women's rights and personal law reform.[45]

Significantly, none of the Committee members was trained in the Hindu legal practices followed in Madras or the United Province. Madrasis had led debates about Hindu law reform during the first

[39] *The Indian Year Book and Who's Who: 1944–45*, Vol. 31 (Bombay, 1945), pp. 1144–1145.

[40] D. N. Mitter, *The position of women in Hindu law* (New Delhi, 1913).

[41] E. Newbigin, 'Personal law and citizenship in India's transition to independence', *Modern Asian Studies*, 45, 1 (2011), pp. 19–21.

[42] J. R. Gharpure, *Hindu law* (Girgaon, Bombay, 1910), p. 22.

[43] Janaki Nair's recent work on Mysore has challenged the long-held view that the Indian princely states were socially and economically 'backward' compared with British India. J. Nair, *Mysore modern: rethinking the region under princely rule* (Minneapolis, 2011), Chapter 6. While the political and social structures of Baroda were different from those of Mysore, this state also undertook revision of its Hindu legal system in the 1930s.

[44] Letter from Manjulal Sevaklal Dave to Jayakar, 9 January 1930, Jayakar Papers F.4.

[45] Forbes, *Women in modern India*, p. 116; Basu and Ray, *Women's struggle*, pp. 48–49; Everett, *Women and social change in India*, p. 146.

decades of the twentieth century, but between 1938 and 1940, the majority of private members' Bills were proposed by representatives from eastern and western India, from the Bombay and Bengal Presidencies. The composition of the Hindu Law Committee seemed to reflect the geographical focus of the most recent round of assembly debates.

Work on the Code Bill began in late July 1941, just a few months after the Government of India had approved the call for codification. In line with the administration's own interests, the Committee was instructed to begin with the law of succession and the other popular topic among reformers, marriage, before moving on to codify other key branches of Hindu law.[46] Members of the Hindu Law Committee agreed that consistency was the watchword of their codification project. B. N. Rau seemed to fully endorse the views put forward by legislators such as M. R. Jayakar, who was discussed in Chapter 3, that reformers needed to take account of the Hindu legal system as a whole when making any changes. Jayakar wrote to Rau shortly after he had been appointed to head the Hindu Law Committee, complaining that those who supported piecemeal legislation

> forget that, running through the whole domain of Hindu Law, as the nervous system in the human body, there are important basic principles founded upon religious, social and economic theories, which were current when the Hindu Law system was built up. Unless these basic principles are dealt with, with the aid of an expert body of lawyers, who are aware of and can trace their existence in the several departments of Hindu Law, mere alternations of these rules in one or two departments will not help the cause.[47]

The terms on which the Government of India had accepted codification had already done much to establish a 'nervous system' for the reform project. The Hindu debates that followed the Shariat and Dissolution of Muslim Marriages Acts had placed concern about Hindu women's rights at the centre of the debates about Hindu law. Reflecting this, and the centralising political forces that had led to the formation of the Hindu Law Committee, Rau and his colleagues pledged to develop a Hindu Code Bill around two key commitments, legal consistency and the removal of gender prejudice from Hindu law. Forming something like a Hindu Shariat, the Committee's Code Bill appeared to offer the same improvement to women's rights and legal clarity that many Muslim representatives had claimed were the defining features of the Shariat Application Act.

[46] See speech by Sir Sultan Ahmed, Law Member, 24 March 1943, *LAD*, 1943, OIOC, V/9/172.
[47] Letter from Jayakar to Rau, 17 March 1941. Jayakar Papers, F.723.

As per the government's instructions, the Committee began by taking up succession law. Committee members justified their proposals on the basis of legislators' earlier demands for reforms, stressing that their ideas were simply putting into practice the ideas and sentiments that Hindu legislators had supported in the period prior to the establishment of the Hindu Law Committee. Pointing to the private members' bills that had recently been introduced to the legislature, Rau and his colleagues argued that 'a fundamental principle which we think it is now time to adopt is that no woman shall be disqualified for succession merely by reason of her sex'.[48] Significantly, the Committee was not, at this stage, considering coparcenary property, which devolved by survivorship, not succession, though the interconnected nature of the codification project meant that this seemingly moderate revision of women's rights was to take on more controversial dimensions as work on the Code progressed.

The Committee's reforms reflected the commonly held view that Dayabhaga property law was more 'modern' or progressive than Mitakshara. The Committee endorsed the order of heirs set out in Dayabhaga law, which, unlike Mitakshara law, included widows and daughters, as the basis for the all-Indian Hindu Code.[49] The few changes introduced as a result of this assimilation should not be difficult for either Mitakshara or Dayabhaga jurists to accept, the Committee argued, and 'a uniform law is well worth this small price'.[50]

Women enjoyed greater rights under Dayabhaga law, but their share in inherited property was not equal to that of male heirs, a fact that contravened the Committee's aim to remove discrimination on grounds of sex alone. The Hindu Women's Right to Property Act had established that a widow, though not a daughter, would receive a share of her husband's estate equal to that of a son. The Committee included the daughter in the list of heirs to her father's estate, regardless of 'whether she is unmarried, married or a widow; rich or poor; and with or without issue or possibility of issue'.[51] This was not to place her on exactly the same footing as her mother and brother, however. A daughter was to receive a share that was half the size of that inherited by a widow and son, on the basis that she would also inherit property from her marital family. To this end, the Law Committee decided that, even if she was a widow when succession opened, the wife of any male heir to a property was entitled to the same share of the property as she would have enjoyed had her husband been

[48] Hindu Law Committee's note: 'Intestate succession: Mitakshara school'. Ibid.
[49] Hindu Law Committee's note: 'Intestate Succession: Dayabhaga school'. Ibid.
[50] Hindu Code Bill, *Gazette of India*, 30 May 1942, p. 94. OIOC, V/11/342.
[51] Ibid, p. 89.

alive. This was not a legal innovation, the Committee argued, but in keeping with the logic of Brihaspati's dictum 'that a widow is the surviving half of her deceased husband'.[52] As a text that had been cited to prohibit widow remarriage, Brihaspati's smriti was not the most obvious basis on which to build a more gender-equal legal system.[53] But it was the way in which the Committee applied this ancient dictum to its task of building a single, coherent code of law that produced a radical new reading of Hindu women's legal rights. '[W]e consider', Committee members explained,

> that our laws of succession should be in aid of our ideals of marriage. Clearly, a widow who succeeds to property as the living half of her deceased husband has fewer temptations to depart from the high Hindu ideal of 'fidelity until death'. Of course, if she re-married, she will forfeit her inheritance.[54]

Transforming Brihaspati's dictum from a regulation to control women's sexuality, as it had been used in the nineteenth century, to one that endorsed a Hindu wife's entitlement to material support from her husband and his family, the Committee's argument reflected the long-term shift in the debates about Hindu law reform seen in the previous chapter. In the wake of the debates about Muslim law reform, this re-reading of the dictum, or rather this extension of its principles to property law, can also be seen as an attempt to demonstrate the 'modernity' or woman-friendly character of the Hindu Vedic texts. Interestingly, at other points in their deliberations, the Hindu Law Committee used a different kind of logic to support the removal of the Hindu woman's limited estate, arguing that since 'Muslim women, Christian women, Parsi women and Jaina women all take a full estate ... it is difficult to maintain that Hindu women alone are incompetent to enjoy full rights'.[55]

Having completed a draft code of Hindu succession law, the Committee members turned their attention to marriage. Their approach to this question was very much in keeping with the ideas and arguments that Hindu legislators had put forward to promote a more gender-just Hindu law vis-à-vis Muslim law reform. In their initial report on the state of Hindu law, Committee members expressed their view that 'according to the early Hindu law monogamy was the approved rule and polygamy an exception requiring legal justification'. But while they felt that 'there is no reason why the Statute Book should not reflect, as far as possible, the

[52] Ibid, p. 107. [53] Mani, *Contentious traditions*, pp. 59–60.
[54] Hindu Law Committee's note: 'Mitakshara school: succession of female heirs to the property of males'. Jayakar Papers, F.723.
[55] *Report of the Hindu Law Committee, 1944–45* (Delhi, 1947), p. 49.

highest ideal of the race', they were anxious not to challenge too far religious orthodoxy and conservative Hindu opinion.[56]

To overcome this difficulty, the Law Committee endorsed two systems of Hindu marriage, a 'religious' ceremony and a 'civil' one, to be based on the format of the 1872 Special Marriage Act.[57] This compromise was itself a reflection of the way in which the Special Marriage Act had grown out of nineteenth-century debates about Hindu marriage. Critical of many contemporary Hindu practices, including the concept of sacramental marriage, members of the Brahmo Samaj had, from the late 1860s, demanded a measure that would give Brahmos a legal status distinct from that of the wider community and permit Samaj members to undertake contractual marriage.[58] Government intervention, led by the then Law Member, Henry Maine, had revised the Brahmos' proposals to create a 'secular' Act which required a couple to denounce their religion before they could be married.[59] This was eventually passed, in 1872, as the Special Marriage Act. Few Indians, including Brahmos, chose to marry under the Act, but its historical origins suggested it to the Hindu Law Committee as a good model from which to develop their own 'secular' Hindu marriage ritual.[60]

Like the Special Marriage Act, the Committee's 'civil' marriage was a contractual ceremony between two equal and consenting individuals, as marriage was understood to operate under Muslim and Christian laws.[61] The Committee's religious marriage, however, was sacramental, not contractual, thereby upholding what, under colonial rule, had come to be seen as the defining feature of Hindu marriage.[62] As such, the Committee's religious marriage could not be dissolved. This privileging of sacramental marriage as 'truly' Hindu reflected the strong dominance of scripture and upper-caste practices in colonial readings of Hindu law. In seeking to construct a codified Hindu legal system, the Hindu Law Committee did much to affirm an even more narrow, 'Brahamnical' view of what constituted Hindu, religious marriage. In the name of legal clarity, the Code made two ceremonies 'essential to the validity of a sacramental marriage . . . invocation before the sacred fire [and] saptapadi, that is the taking of seven steps by the bridegroom and the bride

[56] Ibid, p. 22. [57] Hindu Code Bill, *Gazette of India*, 30 May 1942, p. 122.

[58] Heimsath, *Indian nationalism and Hindu social reform*, pp. 89–91.

[59] P. Mody, 'Love and the law: love-marriage in Delhi', *Modern Asian Studies*, 36, 1 (2002), pp. 228–232; Majumdar, *Marriage and modernity*, pp. 177–182.

[60] Hindu Code Bill, *Gazette of India*, 30 May 1942, p. 122. [61] Ibid, pp. 116–118.

[62] Aishika Chakrabarti, 'Widowhood in Colonial Bengal 1850–1930', Unpublished doctoral thesis, University of Calcutta, 2004, especially Chapter 2, and Sen 'Offences against marriage', pp. 80–88; Sarkar, *Hindu wife, Hindu nation*, pp. 39–52.

jointly before the sacred fire'.[63] Endorsed in the *Shastras*, these distinctly upper-caste practices formed the basis of the marriages performed by the Arya Samaj, which stressed the need to build a strong and united Hindu society under upper-caste leadership.[64] The Committee's Code Bill seemed to endorse the Samaj's unifying aims, though it did not make either marriage ceremony compulsory. Indeed, the Committee expressly upheld the principle of *factum valet* in its marriage law, a rule favoured by colonial jurists, which meant that, once performed, religious rites were legally binding, even if they contravened the rules of statute and customary law.[65] There was another important exception to the Committee's general drive for legal uniformity. The Committee expressly excluded the matrilineal Marumakkatayyam, Aliyasantana or Nambudri legal systems from its succession reforms, its members feeling that these systems already offered women more equal rights.[66]

The wartime Code Bill debates

The Hindu Law Committee submitted the first two chapters of its Hindu Code Bill for consideration by the Central Assembly in March 1943. It immediately met with cries of concern. Some legislators opposed the chapters outright.[67] Other responses were more measured, expressing concern about the dynamics of codification in particular rather than the issue of law reform as a whole.[68] Representing the middle-class interests of urban Hindu voters in the United Provinces, a region that was seen to be more socially conservative than the Presidencies, R. R. Gupta called for the house to discuss the full impact of the reforms on Hindu law.[69]

I admit, Sir, that the question of right in property for our womanhood is very important and it must be conceded. All the same I find that the provisions have

[63] Hindu Code Bill, *Gazette of India*, 30 May 1942, p. 115.

[64] Heimsath, *Indian nationalism and Hindu social reform*, pp. 298–304; F. Agnes, 'Hindu men, monogamy and uniform civil code', *EPW*, 30, 50 (16 December 1995), p. 3423.

[65] J. D. M. Derrett, 'Factum Valet: the adventures of a maxim', *The International and Comparative Law Quarterly*, 7, 2 (April 1958), pp. 280–302; Rocher, 'The creation of Anglo–Hindu law', p. 87.

[66] *Report of the Hindu Law Committee, 1944–45*, p. 36.

[67] Bhai Parma Nand, a former president of the Hindu Mahasabha representing Hindus in West Punjab, opposed the Bill on the grounds that it went against the smritis. 23 March 1943, *LAD*, pp. 1415–1421. Babu Baijnath Bajoria, a Marwari representing Indian commercial interests, attacked many provisions of the Code, particularly what he regarded as its negative impact on the structure of the joint family. He also objected to the Code Bill's timing, arguing that such a controversial measure should wait until after the war; 29 March 1943, *LAD*, pp. 1560–1574.

[68] See also comments of Pandit Nilakantha Das. Ibid, pp. 1546–1550.

[69] R. R. Gupta held the non-Muhammadan seat for the Cities of the United Provinces.

been framed in a way that they go far beyond what is actually essential or what is sufficient to meet the necessities of the times . . . I think it is essential that their effect should be clarified at this stage in this House so that those provisions may be before the public to enable them to form their opinion.[70]

In spite of these objections, the legislature agreed to refer the Code Bill chapters to a joint select committee. Comprising eighteen legislators, the committee met several times over the summer of 1943, at gatherings which were often marked by disputes and discord.[71] The committee included G. V. Deshmukh and A. C. Datta, who, even though they had been active proponents of law reform before 1941, expressed strong reservations about the Law Committee's proposals. Cautious of the knock-on effects of the Law Committee's comprehensive approach to legal reform, Deshmukh called for the succession chapter to be clarified further, so that it could stand as a complete measure in itself.[72] Datta's Bill to improve the inheritance rights of the Hindu daughter had been one of the measures that prompted the formation of the Hindu Law Committee, but he expressed concern about the impact of the new succession code on the wider body of Hindu law and on the economic power of the Indian Hindu community. 'Suffice to say that I am opposed to some of the proposed amendments upon the general principles governing the Hindu Law of Succession as also upon economic grounds', he explained in a note of dissent appended to the joint select committee's report.[73] These factions and differences among Hindu law reformers stood in contrast to the images of legal, and community, unity that were projected, at least, by Muslim representatives in debates about the Shariat Act.

The decision to continue with codification of the remaining branches of Hindu law reflected the disunity of those in the Committee who opposed or questioned proposed reforms, rather than strong support for the Code Bill.[74] A relatively small group within the Committee (H. N. Kunzru, P. N. Sapru and the only female committee member,

70 29 March 1943, *LAD*, pp. 1553–1554.

71 See June 1943 correspondence between B. N. Rau, the then Law Member Sir Sultan Ahmed and M. R. Jayakar, who was asked, but declined, to join the select committee as a legal expert. Jayakar Papers, F.723.

72 G. V. Deshmukh's note of dissent, 'Report of the Joint Committee on the Bill to amend and codify the Hindu Law relating to intestate succession with the amended Bill' (1943), OIOC, L/P&J/7/5496.

73 Ibid.

74 All bar two members of the committee appended minutes of dissent to the select committee report. The two non-dissenting members were members of the government: the then Law Member Sir Saltan Ahmed and Shavaz Ardeshar Lal, who held the post of Joint Secretary to the Legislative Department.

Renuka Ray, who referred to themselves as the 'progressives') managed to dominate proceedings and cajole the more sceptical majority to allow the Law Committee to complete the code.[75] By early 1944 the Hindu Law Committee had been reassembled, with one exception: legislators' criticism of V. V. Joshi's legal skills meant that he was replaced by T. R. Venkatarama Sastri, a lawyer from Madras who was considered well versed in Sanskrit law. A Brahmin and strong opponent of Periyar and the non-Brahmin Justice Party, Sastri's appointment did little to challenge the upper-caste emphasis of the codification project.[76]

To assist them in their work, it was decided that the Law Committee would tour the country for six weeks, to gather information and opinions from legal specialists and members of the general public. The Committee spent considerable energy publicising the draft code. Between October 1944 and January 1945, the Committee's proposals were translated into twelve different Indian regional languages and printed and distributed, free of charge, in all of the provinces of British India, except Assam and the North West Frontier Provinces. Interest in the Committee's work seems to have been widespread, with the Government of Bengal printing more than 10,000 copies of the Bengali-language pamphlet. The initial deadline for submission of opinions to the Committee had to be extended by several months owing to both 'delay in the publication of the translations and the insistent public demand'.[77] On 20 January 1945, the Committee began its tour of the country in Bombay, interviewing directly 121 individual witnesses and representatives of 102 associations.[78]

Many of those interviewed argued that the Code took reform too far, risking the stability of the Hindu family and wider social structures. Their responses drew heavily on colonial ideas about legal evolution, which saw Hindu law as traditionally based on group relations rather than individual property rights. K. Ramamurthy, an advocate from Hyderabad state and representative of the Secunderabad Sree Sanathana Dharma Mahasabha, expressed his view that, in undermining the position of the joint family in Hindu law, the Code Bill attacked the spiritual values of

[75] P. N. Sapru to Jayakar, 7 July 1943. Jayakar Papers, F.723.

[76] D. Arnold, *The Congress in Tamilnad: nationalist politics in South India 1919–37* (New Delhi, 1977), p. 109. Later, in 1949, he was personally involved with drawing up a constitution for Hindu right-wing militant organisation the Rashtriya Swayamsevak Sangh, and for securing the release of its then leader, M. S. Golwalkar, following its prohibition after Gandhi's assassination. *The Mail*, 13 July 1949, p. 6.

[77] *Report of the Hindu Law Committee 1944–5*, p. 2.

[78] The Committee visited Bombay, Poona, Delhi, Allahabad, Patna, Calcutta, Madras, Nagpur and Lahore. Ibid, pp. 2–3.

Hinduism but also the 'economic free life of the members of Hindu society'. 'In fact,' he continued, the Bill 'makes inroads on religion of Hindus [sic], destroys their rights and the structure of their society, without defining their rights or offering an economic structure for a self-sufficient India.'[79] Sri D. Subrahmanya Varma, a lawyer from West Godavari in the Madras Presidency, argued that the Code Bill 'strikes at the root of the institutions that are the cherished pride of a vast majority of the peoples of this country. Of the uses of the caste system, the joint family, or the marriage laws generally one need hardly go into an elaborate discussion to point out their excellence or utility.'[80] In Punjab, representatives of the Sanatan Dharam Pratinidhi Sabha argued that the Code was based on western and Muslim legal norms, violating the principles of Hindu 'Dharma' on which 'every aspect of [Hindu] life, whether physical, economic, political, educational, industrial or spiritual, is based'.[81] Other witnesses argued that the Code Bill imported principles of Muslim law into the Hindu legal system, often pointing to the decision to grant daughters a share of their fathers' estate to verify this claim.[82]

Witnesses who supported the Code frequently framed their views in terms of opposition to conservative or orthodox opinions. The Indore Branch of the All-India Women's Conference welcomed the Code Bill as a 'necessary' measure, arguing that opposition to the Code came from men only and if women were to be found resisting they were 'instigated by selfish men and are convenient tools in the hands of the latter'.[83] In his evidence to the Hindu Law Committee, Sir T. B. Sapru explained: 'I have no hesitation in submitting my opinion. It must, however, be understood that I represent in no sense the orthodox Hindu point of view and I have a fear that neither at present nor in future can we look forward with much hope to our legislature agreeing to bring the Hindu Law radically into line with modern conditions.'[84]

[79] 'Written Statements submitted to the Hindu Law Committee, 1945' (Delhi, 1947), Vol. II. Ibid, p. 625.

[80] Ibid, p. 555.

[81] Ibid, pp. 714–715.

[82] See submissions from District Bar Association, Patna, Bihar, 'Written Statements submitted to the Hindu Law Committee, 1945', Vol. I, p. 166; and Bengal representative of the All-India Anti Hindu Code Committee. Ibid, p. 201.

[83] Ibid, p. 97.

[84] Ibid, p. 122. Sir T. B. Sapru (1875–1949) was an Indian lawyer and politician. Based at the Allahabad High Court, Sapru was elected to the Legislative Council of the United Provinces as a representative of the Liberal Party in 1913 and served as a legislative representative throughout the interwar period. Between 1920 and 1923 he was Law Member on the Viceroy's Council.

The Hindu Law Committee completed its tour in mid March. Committee members dispersed with plans to meet again later in the year to discuss the evidence collected. Global events within this brief period were to radically alter the political context of the Code Bill project. Allied forces celebrated their victory in Europe in May 1945 and Japanese forces surrendered four months later. On 19 September 1945 the British Government issued a formal declaration of its intention to transfer full political control to Indians and withdraw from the subcontinent.[85] The Hindu Law Committee reassembled in Bombay eight days after this announcement. The main topic for discussion was the one issue that the Committee had avoided so far – the Mitakshara coparcenary.

The coparcenary unit and the system of survivorship that reinforced it were based on the exclusion of women on the basis of sex alone. One of the key arguments used to justify a woman's exclusion from her natal coparcenary was the fact that, on marriage, a daughter left her father's family to become her husband's economic dependant.[86] It became much harder to make this argument in light of the Committee's changes to other branches of Hindu Law. Giving a daughter access to her father's self-acquired estate, the Committee's code of succession law recognised the bond between a woman and her natal family, regardless of her married status. Indeed, the very notion that a woman was property, first of her father and then, on marriage, her husband, had been challenged by the Code Bill. The reforms and changes introduced by the Law Committee in all other areas of Hindu law had, it seemed, raised real questions about the legal validity of the Mitakshara coparcenary.

It is hard to tell whether this realisation about the coparcenary and its future came as something of a surprise to the members of the Law Committee in the later stages of their discussion, or if they had been consciously avoiding the topic for some time, but as soon as the question of the coparcenary was raised directly it became the source of heated debate between Committee members. At least two Committee members agreed that the coparcenary system was unsustainable and called for its abolition under the Code. A third was convinced of this argument only

[85] Broadcast speech by Field Marshall Wavell at New Delhi, 19 September 1945, N. Mansergh (ed.), *Transfer of power documents*, Vol. VI, pp. 282–283.

[86] This argument was put particularly clearly in G. V. Deshmukh's original draft of the Hindu Women's Right to Property Act, which proposed to grant daughters a share in their fathers' property. See summary of UP views on the Bill by Secretary of the Government, United Provinces Judicial (Civil), Department to the Secretary of the Government of India, Legislative Department, 15 January 1935, NAI, Home Department, F.28/25/1938, Judicial.

on the basis that the federal division of subjects under the 1935 Government of India Act meant that the Code Bill would not affect property rights in agricultural land.[87]

D. N. Mitter, however, refused to back this decision or the Code in general. On 30 September, he announced that he was withdrawing from the Committee. Tabulating views for and against codification in both oral and written evidence, Mitter concluded that while 206 of those interviewed supported the principle of a Hindu Code, 352 were opposed.[88] It was not only the quantity of opposition that affected Mitter but also the quality of the arguments against the Code. He sympathised with interviewees' concerns about the timing of the Code Bill, agreeing that the government should not impose profound changes to subjects' 'domestic life and properties' while India was at war, or on the verge of gaining independence. In his opinion, the tour had shown that 'Hindu ladies and gentlemen representing the wealth, the talent and the public spirit of this vast country are *almost* unanimous in condemning the Hindu Code'.[89]

Expressing disappointment at Mitter's decision, his colleagues argued that poor publicity about the tour had affected the kinds of views gathered as many of those who had testified 'were under the impression that only opponents of the Code should appear before us'.[90] They disagreed, however, that either this response or wider political events meant that the Code Bill should be dropped. Indeed, in their final report they argued that the end of the Second World War and the British Government's declaration that they were to withdraw from India made progressive law reform even more urgent. To become a strong nation in the future, India needed to adopt the forward-thinking legal code the Committee now presented:

> In recent months, India has been participating in the international conferences and pleading for human rights and for equal treatment of Indians in foreign countries with an eloquence which has commanded universal admiration. The eyes of the world are upon her now and it would be more than a misfortune if at this juncture she were to fail to enact within her own borders a Hindu Code in which there was equality before the law and in which disabilities based on caste or sex were no longer recognised. We are now almost bound in honour to remove these disabilities at the earliest possible moment. This should be a sufficient answer to the question, who demands these changes in the law?[91]

[87] *Report of the Hindu Law Committee, 1944–45*, p. 17. [88] Ibid, p. 82.
[89] Ibid, pp. 113–114. Italics in original.
[90] *Report of the Hindu Law Committee 1944–45*, pp. 12–13. [91] Ibid, p. 5.

Thus, in April 1947, a complete Hindu Code was introduced for circulation in the legislature.[92] Including the succession and marriage reforms that had been presented earlier to the house, the Code set out a radical vision of a Hindu legal system, the basic unit of which was not the multi-generational, male-dominated joint family but a Hindu individual, unfettered by gender and caste identity. By this point, however, Indians both inside and outside the legislature were more concerned about the nation's political future than the new Hindu Code Bill.

A Hindu Code in a secular state? The impact of partition on the Hindu Code Bill debates

Independence and the partition of the subcontinent along religious lines had important repercussions for the relationship between state power and religious community in the Code Bill debates. On 11 April 1947, the Central Assembly voted to refer the Hindu Law Committee's draft Code Bill to a joint select committee, though the formation of this body was put on hold pending the withdrawal of British power. When discussion of the Code began again in November 1947, much had changed. Though Congress leaders insisted on the secular nature of the Indian state, the communal tension that characterised the transfer of power period, together with partition itself, meant that, at times, it became possible to associate 'Indianness' with Hindu identity and interests. The Hindu Law Committee had drafted the Code Bill as a measure applicable to one community within India, but with the seeming 'Hinduising' of the independent Indian state, the Code began to take on a new nationalising character. It was not only the idea or political context of the Hindu Code Bill that had shifted. The violence of partition, and the constitution-making process that followed it, brought about important shifts in the regional power dynamics of the law reform debates. Whereas representatives from the Madras and Bombay Presidencies had shaped the inter-war reform debates, after 1947 dominance shifted to representatives from those areas of northern India who had been most affected by partition violence and who held the greatest number of seats in the new legislatures following the decision to link legislative representation to regional population size.

Many Indians greeted independence with hope and excitement. Nehru's policies promised to transform India from a position of economic subordination within the imperial economy into an economically

[92] It was circulated in the house as the 'Bill to amend and codify certain branches of Hindu Law', OIOC, L/P&J/7/5496.

strong new nation-state.[93] Forward-looking, secular India was contrasted with Pakistan, a nation that drew its identity from religious tradition. Indeed, the very creation of Pakistan altered Indians' attitudes towards religion and politics, prompting many legislators to blame the separate electorates of colonial rule for the social divisions that had allowed the demand for Pakistan to become a reality.[94] In keeping with Nehru's economic vision of the nation, the new legislature was willing to tolerate social uplift policies that identified a particular socio-economic group for special political treatment, but any suggestion that political advantages should be accorded to religious communities was rejected as divisive and anti-national.[95] India's postcolonial modernity was cast in the universal language of economic development. In contrast to its imperial counterpart, national politics eschewed religious difference to focus on citizens, freed from all ascriptive identities.

Partition gave a dark underside to these sentiments.[96] While independence prompted Indians to look to a secular future, the violence and disruption of partition created strong feelings of nostalgia and a sense of group identity that was firmly rooted in religious tradition. For those who experienced it first hand, partition violence was a very real attack on religious identity and family structures. In Punjab, Bengal and parts of northern India, partition violence ripped apart families and notions of domestic order.[97] Seen as symbols of the 'other' community's religious identity and purity, women from all religious communities were raped, abducted, forcibly converted and physically attacked in the partition violence.[98] Highlighting their inability to defend their communities,

[93] B. R. Nanda, *Jawaharlal Nehru: rebel and statesman* (Delhi, 1995), pp. 189–193; B. Parekh, 'Nehru and the national philosophy of India', *EPW*, 26, 1/2 (5–12 January 1991), 35–39, 41–43, 45–48.

[94] Singer, *A constituency suitable for ladies*, pp. 52–55; Tejani, *Indian secularism*, pp. 246–248.

[95] Ibid, pp. 244–265.

[96] G. Pandey, 'The prose of otherness', in G. Pandey and P. Chatterjee (eds.), *Subaltern Studies VII* (Delhi, 1994), pp. 189–221.

[97] U. Butalia, *The other side of silence: voices from the partition of India* (Delhi, 1998); R. Menon and K. Bhasin, *Borders and boundaries: women in India's partition* (New Delhi, 1998); G. Pandey, *Remembering partition: violence, nationalism and Indian history* (Cambridge, 2001); A. B. Datta, 'Gendering oral history of partition: interrogating patriarchy', *EPW*, 41, 22 (3–9 June 2006), 2229–2235; Y. Khan, *The great partition: the making of India and Pakistan* (New Haven, London, 2007), pp. 128–135, 163–165, 179–180; I. Talbot, with D. Singh Tatla (ed.), *Epicentre of violence: partition voices and memories from Amritsar* (Delhi, 2006), pp. 20–30, 199–206; J. Chatterji, *The spoils of partition: Bengal and India 1947–1967* (Cambridge, 2007), pp. 105–208; V. F.-Y. Zamindar, *The long partition and the making of modern South Asia: refugees, boundaries, histories* (New York, Chichester, 2007), especially pp. 19–70, 79–112.

[98] Butalia, *The other side of silence*, p. 204; Menon and Bhasin, *Borders and boundaries*, pp. 41–44.

and particularly their women folk, the violence and disorder of the riots posed a real and direct threat to the patriarchal authority of male leaders in the regions affected. That these regional partitions formed the basis of a process of national division allowed these 'local' events to overlap and intersect with an emerging narrative about national independence and state building.[99]

Public condemnation of the violent attacks on north and eastern Indian Hindu and Sikh women was matched with calls on the state to protect and avenge 'our' women – and thus also a sense of *national* patriarchal honour. This created an entirely new context for discussions about women's status under Hindu personal law. The pressures of imperial finances and debates about fitness to rule during the 1920s and 1930s had prompted legislators to put more emphasis on women as rights-bearing individuals. The anti-Brahmin politics of western and southern India had also helped to drive debates about Hindu patriarchy. But the violence that accompanied partition was worst in areas of the north that had been less open to these more radical caste pressures. Public and political responses to the partition riots established north Indian leaders' desire to reaffirm religious social structures, particularly those relating to gender, as a national preoccupation.

Partition also placed more material demands on the state to act in a benevolent and paternalistic way, focusing particular energy on Hindu communities that had migrated out of regions that were now Pakistani territory. India's division involved the dissection not only of territory but also of armies, administrators and populations. From the announcement that British India would be divided to create two separate states, refugees began to flood into the territories of what would become the Indian nation-state.[100] Refugee camps were set up in the partitioned provinces and also in Delhi where large numbers, mostly from Punjab, came to put down new roots.[101] The cabinet post of Minister for Relief and

[99] Pandey, *Remembering partition*, Chapter 2.

[100] In December 1951, the Indian Ministry of Rehabilitation gave the number of refugees into India from West Pakistan as 5 million. The Pakistan Ministry of Refugees put the number of refugees travelling in the opposite direction at 7.9 million. J. B. Schechtman, 'Evacuee property in India and Pakistan', *Pacific Affairs*, 24, 4 (December 1951), p. 406. On the politics of managing partition refugees see also G. Kudaisya and T. T. Yong, *The aftermath of partition in South Asia* (London, 2000); Chatterji, *Spoils of partition*; Zamindar, *The long partition and the making of modern South Asia*.

[101] By 15 January 1948 the Government stated that 51,979 refugees were applying for employment through its Live Register of Employment Exchanges, the largest number coming from East Punjab, where 15,590 people had registered, and Delhi province, where the figure was 2,149. Starred question 459, 'Unemployed refugees Registered in Employment Bureau', 25 February 1948, *LAD*, Vol. I, Pt I, p. 1204.

Rehabilitation was created, to which Shri Mohan Lal Saksena, a somewhat conservative UP Congressman, was appointed.[102] The impact of this refugee crisis on the national economy, already devastated by the Second World War, was enormous. Military expenditure had resulted in imbalances in production, shortages of consumer goods, tight economic controls and high inflation. Food shortages did not ease up after the war, with poor millet and wheat harvests in 1946 and 1947 respectively making the situation worse. By the end of 1946, around 150 million people were covered by rationing of some kind.[103]

Against this backdrop, the violent attacks on women during partition became a focal point or metaphor for the confusion and disorder felt in homes on a national scale. Indians from a range of backgrounds called for the government to intervene and 'restore' India's kidnapped women from their Pakistani (Muslim) captors. No consideration was given in public discourse to a possibility that some of these women had gone willingly or established a happy marriage and relationship with men of the other community.[104] The return of abducted Hindu and Sikh women to India was seen as something that would empower the Indian people.

As Urvashi Butalia, Ritu Menon and Kamla Bhasin have explored, the Indian and Pakistani governments responded to such sentiments by agreeing a special ordinance under which they assumed extraordinary powers to recover and repatriate abducted women, with or without their consent.[105] When the ordinance expired, a Bill was drawn up to continue the powers of the East Punjab Liaison Agency.[106] On 15 December 1949, Nehru's government introduced the Abducted Persons (Restoration and Recovery) Bill to the Constituent Assembly.[107] The Bill defined an abducted person as:

> a male child under the age of sixteen years or a female of whatever age who is, or immediately before the first day of March 1947, was, a Muslim and who, on or after that day, has become separated from his or her family and is found to be living with or under the control of a non-Muslim individual or family, and in the latter case includes a child born to such female after the said date.[108]

[102] M. Hasan, *Legacy of a divided nation: India's Muslims since independence* (London, 1997), p. 149.

[103] Tomlinson, *The economy of modern India*, pp. 161–162; Dietmar Rothermund, *An economic history of India 1860–1970*, pp. 122–123.

[104] U. Butalia, 'Community, state and gender: on women's agency during partition', *EPW*, 28, 17 (24 April 1993), pp. WS-16–WS-19.

[105] Butalia, *The other side of silence*, pp. 108–110; Menon and Bhasin, *Borders and boundaries*, pp. 64–130.

[106] Ibid, pp. 133–134.

[107] 15 December 1949, *CAI(L)D*, Vol. VI, Part II, p. 633.

[108] Ibid, p. 645.

Though the object of the Bill was to de-legitimise a family's 'control' over women from the 'other' religious community, the legislation did not undermine the idea of familial control or ownership over women more generally. Rather, the Bill reinforced the highly conservative view of women as 'property' of a male-dominated family unit, with the state playing the role of patriarch in reclaiming the women who 'belonged' to it. The provisions of the Abducted Persons Restoration Act presented state authority and power in a manner that was strongly reminiscent of a wider family collective, such as the male coparcenary unit that lay at the heart of Mitakshara law.

Public responses to partition had already done much to place the interests of north Indian patriarchs at the heart of the debate about Indian nation-building. But the reorganisation of legislative power that accompanied the move to universal franchise secured the political dominance of representatives of the regions affected by partition violence over the new central assembly (see Table 4.1). The Constituent Assembly was formed in 1946 on the basis that each region could elect one representative for every million of its population.[109] The regional distribution of seats was altered radically following partition as Bengal, previously the most populous and powerful province, was stripped of more than half of its legislative powerbase.[110] The major beneficiaries of this reorganisation were the former United Provinces (now Uttar Pradesh) and its neighbour Bihar.[111]

This shift in the regional topography of political representation informed the character of both the discussions about rehabilitating the female victims of partition violence and the debates about Hindu law reform that followed independence. Though there had been violence in eastern areas of India, where most Hindus were governed by Dayabhaga law, the debates about the Abducted Persons Bill were dominated by legislators for whom 'traditional familial structures' referred to Mitakshara practices. North Indian Hindu legislators played a particularly active role in the debates about the Abducted Persons Bill: of the thirty-four legislators who spoke on the Bill, fifteen (or 44 per cent) came from Punjab and Uttar Pradesh, as opposed to three Bengali Hindus and seven south Indian representatives, one of whom, Shri N. Gopalaswami Ayyangar, was the minister in charge of moving the measure (see Table 4.2). Significantly, discussion of the Abducted

[109] Austin, *The Indian Constitution*, p. 5; Chatterji, *The spoils of partition*, pp. 66, 68.
[110] Ibid, pp. 71–73. [111] Ibid, pp. 93–94.

Table 4.1 *General election results 1951/1952*

State name	Number of seats	Number won by Congress	Percentage held by Congress
Assam	12	11	92%
Bihar	53	45	85%
Bombay	45	40	89%
Madhya Pradesh	28	27	96%
Madras	75	35	47%
Orissa	17	8	47%
Punjab	18	16	89%
Uttar Pradesh	86	81	94%
West Bengal	31	21	68%
Hyderabad	25	14	56%
Madhya Bharat	10	8	80%
Mysore	11	10	91%
PEPSU	5	2	40%
Rajasthan	19	8	42%
Saurashtra	6	6	100%
Travancore Cochin	12	6	50%
Ajmer	2	2	100%
Bhopal	2	2	100%
Bilaspur	1	0	0%
Coorg	1	1	100%
Delhi	4	3	75%
Himachal Pradesh	3	3	100%
Kutch	2	2	100%
Manipur	2	1	50%
Tripura	2	0	0%
Vindhya Pradesh	6	4	67%
TOTAL	478	356	74%

Source: Statistical Report on General Elections, 1951 to the First Lok Sabha (Vol. I), pp. 75–78.

Persons Bill ran concurrently with one of the longest and most heated sessions of the Hindu Code Bill debates.

There was still some support for the Code Bill when it was reintroduced to the Constituent Assembly in November 1948, even from those who represented areas that had been affected by communal violence. A Hindu legislator from UP, Shrimati Kamala Chaudhri, told the legislature: ‘My personal feeling is that this Bill will prove a sort of panacea for our women, community and the progress of our Indian Society, and this will go a long way to benefit our women-folk who are

Table 4.2 *Provincial constituencies of speakers in the Abducted Persons Restoration Act debates, held on 15, 16, 17 and 19 December 1949*

Uttar Pradesh	East Punjab and PEPSU (Patiala and East Punjab States Union)	Rajasthan	Bombay, C. P. and Madhya Bharat	West Bengal	Assam	Madras
Shrimati Purnima Banerji	Dr Bakhshi Tek Chand	Shri Raj Bahadur	Shri H. V. Pataskar (Bombay)	Shri Suresh Chandra Majumdar	Sjt. Kuladhar Chaliha	Shri N. Gopalaswami Ayyangar (Minister of Transport and Railways: introduces the Bill)
Shri Mahavir Tyagi	Pandit Thakur Das Bhargava		Shri H. J. Khandekar (CP and Berar)	Shri Upendranath Barman	Sjt. Rohini Kumar Chaudhuri	Shri C. Subramaniam
Pandit Balkrishna Sharma	Sardar Bhopinder Singh Man		Shri R. K. Sidhva (CP and Berar)	Shrimati Renuka Ray		Shri M. Tirumala Rao §
Pandit Hirday Nath Kunzru	Sardar Hukam Singh		Dr P. S. Deshmukh (CP and Berar)	**Mr Naziruddin Ahmad (Muslim)**		Shri T. A. Ramalingam Chettiar §
Prof. Shibban Lal Saksena	Sardar Suchet Singh		Shri V. S. Sarwate (Madhya Bharat)			Shrimati Ammu Swaminadhan
Shri Ajit Prasad Jain	Shri B. L. Sondhi					Shrimati G. Durgabai
Shri Algu Rai Shastri						The Honourable Shri K. Santhanam
Shri Krishna Chandra Sharma						
Shri Jaspat Roy Kapoor						
9	**6**	**1**	**5**	**4**	**2**	**7**

Key: § denotes a speaker who made only a very brief interjection in the debate rather than expressing his or her views at length.
Source: Constituent Assembly of India (Legislative) Debates, Vol. VI Part II and Vol. VII Part II.

even today being degraded to the lowest ebb.'[112] But many other legislators were unwilling to support such an argument, seeing the Code Bill as a step backwards, rather than forwards. 'The present Hindu Code is an artificially engineered device of the former rulers when they tried to keep us apart', H. V. Pataskar told the legislature. 'We want to form a single State, not based on religious tenets, whether they be Hindu or Muslim or any other, but a truly secular State.'[113] This was an entirely new climate for debates about reform of Hindu personal law.

Conclusion

Though it was influenced by the pressures that had driven earlier debates about personal law reform, the Hindu Code Bill project was the rather surprising result of the way in which Hindu legislators and colonial officials' interests in Hindu law reform came together in the particular context of the late 1930s. In this way its history is not dissimilar to the 'twists and turns' that Mrinalini Sinha has shown to have shaped the 1929 Sarda Act.[114] Support for codification of Hindu personal law was shaped by Hindu legislators' desire to respond to the modernising rhetoric of the Shariat Application and Dissolution of Muslim Marriages Act on the one hand, and to provide the colonial administration with a clear, all-India applicable code of Hindu law, including property relations, on the other. Yet the Code Bill itself was drawn up by a very small number of elite jurists who had no direct connection to the Indian electorate. Operating away from the forces that had prompted its establishment, members of the Hindu Law Committee drew up a Code Bill in line with their own notions of legal progress and consistency. As a result, many of those who had promoted the legislation that had led to the establishment of the Hindu Law Committee were greatly alarmed by its proposals.

These internal shifts within the debates about Hindu law reform took place at a moment when the entire field of political power in India was entering a state of flux. The transfer of power negotiations and partition of the subcontinent transformed the composition of both the political administration and the state legislatures – the two forces that had shaped debates about personal law reform up until this point. The 1946 elections to the Constituent Assembly brought to power the Hindu-majority Congress, whose representatives had long had a somewhat ambivalent relationship with the idea of law reform and who had boycotted the legislatures at precisely the time that the Code Bill was being drawn up.

[112] 12 December 1949, *CAI(L)D*, Vol. VI, November–December 1949, p. 536.
[113] Ibid, p. 491. [114] Sinha, *Specters of Mother India*.

The elections also brought to power a legislature with a very different regional power dynamic from the ones that had existed during the inter-war years, a dynamic which was only exacerbated following the horrific communal violence that accompanied independence. Rather than as a measure that could strengthen the position of Hindu law vis-à-vis that of its Muslim counterpart, many of the legislators who came to power after 1947 saw the Code Bill as a destructive measure, drawn up by an out-of-touch and authoritarian colonial administration, which had no place in a new, democratic India.

Nevertheless, there were important continuities in the ways in which law reform was perceived before and after independence. The late 1930s' debates about the Shariat and Muslim Marriages Acts had done much to construct a view of Muslim law as a body of religious knowledge, best administered by Islamic leaders rather than state-trained bureaucrats. The final outcome of the Muslim Marriages Act had, of course, done much to challenge this view, but in the wake of partition, many of the Muslims who were left in India found new reasons to support the idea of Muslim law as a structure that operated beyond the purview of the now Hindu-dominated state. Legislation such as the Abducted Persons Act did much to reinforce the notion that the Muslim community existed and operated outside the Indian nation.[115] A period of great dynamism and creativity in Muslim legal politics, a dynamism that in many ways helped to spark if not the idea of a Code Bill then the women-focused terms on which it was drawn up, was firmly closed down with the partition of the subcontinent.

There was similar continuity in the debates about Hindu law. Though framed in universal terms, the notion of legal 'modernity' with which the Law Committee presented the codification project was intimately bound up with the politics of colonial power in that it viewed as superior and globally applicable legal forms and practices that had developed in Britain and the west. Independence removed the 'racial' division that had separated the Indian state, and its legal structures, from Indian society. State power was no longer the preserve of a foreign oppressor; it was now wielded in the name of a Hindu-majority Indian population. Partition also altered the relationship between the Indian state and Indian society by serving, simultaneously, to affirm and deny a central role for Hindu identity within the politics of the new Indian nation-state. Hindu identity offered one of the few secure foundations for the

[115] This provides a clearer historical understanding of the view of contemporary Muslim law presented by Partha Chatterjee and discussed in the introduction to this book. Chatterjee, 'The resolution of the women's question', pp. 250–251.

development of a clear national identity, yet the politics that had led to the creation of Pakistan had also created a desire to affirm the profoundly secular character of this Indian national identity. As the Indian legislature revived discussions of the Hindu Code Bill, Hindu law reform became one of the key battlegrounds for questions about national identity and citizenship in the new postcolonial Indian state.

5 B. R. Ambedkar's Code Bill: caste, marriage and postcolonial Indian citizenship

On 17 November 1947 the Constituent Assembly passed a motion to revive consideration of the Hindu Code Bill. Only three months after partition and British withdrawal from the subcontinent, the Assembly's primary task was to draw up a constitution for the new Indian nation-state. The decision to take up the Code Bill so soon after independence has been attributed to the personal politics of Prime Minister Jawaharlal Nehru and his then Law Member, Bhimrao Ramji Ambedkar, and their commitment to social reform.[1] Whatever role Ambedkar played in reviving the Hindu Code Bill, his particular brand of anti-caste politics and his handling of the Code had profound legacies for the development not only of Hindu law but also notions of citizenship, in the newly independent Indian nation-state.

A member of the Untouchable Mahar community from Maharashtra, Ambedkar's political career was dedicated to bringing an end to Untouchability and the caste system. A prominent critic of the Indian National Congress and of Gandhi in particular, Nehru's decision to appoint Ambedkar reflected the Congress leadership's desire to consolidate both the country and its hold over Indian politics in the wake of partition. As a western-trained lawyer and political theorist, Ambedkar seemed to speak a political language that was close to Nehru's own, or certainly closer than that of the Prime Minister's senior Congress government colleagues, such as Rajendra Prasad and Vallabhbhai Patel. Both Nehru and Ambedkar favoured strong, centralised state power over the Gandhian model of the village republic and called for the 'modernisation' of Indian society rather than a return to a pre-colonial past. It is the two men's shared commitment to social modernisation that scholars

[1] Sarkar, 'Jawaharlal Nehru and the Hindu Code Bill', pp. 90–91, 95–98; Som, 'Jawaharlal Nehru and the Hindu Code Bill', pp. 165–171, 186; W. Sonalkar, 'An agenda for gender politics', *EPW*, 34, 1–2 (1999), pp. 24–29; N. Subramanian, 'Making family and nation: Hindu marriage law in early postcolonial India', *Journal of Asian Studies*, 69, 3 (August 2010), p. 777.

have seen as the main driving force behind the decision to revive the Hindu Code Bill in November 1947.[2]

While independence, and partition, may have helped to draw Nehru and Ambedkar into a closer political alliance, there remained vital differences in the way in which they envisaged India's path to modernity. Both men saw religion as an irrational and retrograde force that prevented Indian society from developing along the preferred route. Influenced by socialist accounts of historical progress, Nehru saw economic change as the main driver of social reform. He saw science and technology as the embodiment of reason, believing that as their influence and power spread through India, they would become the main drivers of human action, not necessarily removing religious doctrine, or superstition, but relegating them to the inner mind or private domain.[3] As an Untouchable leader, Ambedkar also saw religion, or more precisely Hinduism, as the principal threat to India's rational progress. As the first part of this chapter explores, Ambedkar felt that caste, an institution that many people saw as synonymous with Hinduism, was completely incompatible with democracy or political modernity of any kind. Whereas Nehru saw the problem of religion in Indian society as one of personal faith, a way of seeing the world that could be questioned and dissolved by the spread of economic and technological developments, Ambedkar saw it as one of caste, that is in terms of materially and morally entrenched power relations. Ambedkar also differed with Nehru about the key driver of modern, rational society. Ambedkar viewed law and liberal state power, focused on the rights-bearing individual subject, as the exact antonym of caste society, which was mired in irrational prejudice. Caste could not be gradually eroded, he believed, it had to be actively abolished, using rational legal power. Only once this was done, Ambedkar argued, could real democratic, modern citizenship be built. His appointment to the post of Law Member gave Ambedkar an opportunity to put his political ideas into practice, while the Hindu Code Bill seemed to be the perfect vehicle with which to secure this aim.

Being outside the Congress organisation, Ambedkar had not been part of its legislative boycott during the war. He had attended wartime discussions about the Hindu Law Committee's early draft chapters of the Code Bill and was more familiar with its provisions than many of the representatives who took their seats in the legislature after the 1946 elections.[4] Ambedkar's commitment to social equality and his hostility

[2] Ibid.
[3] J. Nehru, *The discovery of India* (New Delhi, 1946, 1981 edn), pp. 180–183.
[4] Ambedkar's presence in the chamber is referred to in a speech by Babu Baijnath Bajoria against the Code Bill on 29 March 1943, *LAD*, p. 1571.

to traditional Hindu power structures meant that he saw the Code Bill not as a destructive measure but as a wholly positive force which could bring about a modern Indian society. In fact, if the new legislature wished the Indian nation-state to be truly democratic, he argued, it was vital that they pass the Code Bill precisely because it challenged gender discrimination and hierarchy among Hindus.

This chapter takes Anupama Rao's study of Ambedkar's anti-caste politics and its legacy for Indian democracy forward to show how Ambedkar used the secular and universal ideals of equality, fraternity and liberty to address caste as not simply an Indian problem but a specifically Hindu problem. As a result, Ambedkar's view of the Code Bill as the cornerstone of modern Indian statehood and democracy did much to reinforce the perceived and institutionalised relationship between Hindu law and the 'universal' legal structures of state governance that had already begun to emerge before independence. As the last chapter explored, the partition of the country along religious lines seemed, at moments, to give the new Indian nation-state a Hinduised identity. Ambedkar's position on caste set him violently at odds with upper-caste Hindu nationalists who, after partition, called for the establishment of Hindu Raj in India. Yet his argument that the advent of democracy required legislative intervention to abolish caste served to affirm the argument that the new Indian state was more bound up with Hindu society than with other non-Hindu communities in India. This chapter traces the ways by which his attempt to remove what many saw as the defining feature of Hindu society served in fact to restructure, but ultimately reaffirm, Hindu political dominance in the postcolonial Indian state.

The state of reason: religion and the state in Nehru and Ambedkar's political thought

Previous studies of the Code Bill debates have focused on the range of positions taken, both for and against the Code, within the legislature as a whole, but have largely ignored the important differences in Nehru and Ambedkar's politics, or how these shaped their respective views of the Hindu Code Bill. Though Nehru was strongly opposed to much of the existing structure of Hindu law, his political outlook meant, as Reba Som has argued, that he was able to see the Code Bill primarily as a symbolic measure, setting out an ideal pattern of social relations which India should, and inevitably would, move towards.[5] For Ambedkar, however,

[5] Som, 'Jawaharlal Nehru and the Hindu Code Bill', pp. 165–195.

the very aim of the Code Bill was to establish immediate, substantive social change. Believing that any form of social and political progress was impossible while the caste system continued, Ambedkar saw the Code Bill as a measure that could 'annihilate' caste and, in so doing, lay the ground for true Indian democracy.

Nehru's relationship with socialist politics was as complex as his relationship with Gandhi, and of course the two were intimately bound together.[6] While Nehru may have turned his back on pursuing a more active brand of socialist politics during the 1930s, he remained deeply influenced by Marxist ideas in his approach to postcolonial state building.[7] Nehru saw science and technology as the embodiment of reason and the main drivers of historical change. Like other leading Congress figures, he accepted that political and social differences should be subordinated to form a united front against British rule, but his commitment to state-based economic planning and heavy industry was unswerving, forcing Gandhi and more conservative Congressmen to accept the formation in 1939 of a planning sub-committee within Congress.[8]

As well as the economy, Nehru differed with Gandhi in his view of religion. He had little time for the Mahatma's religious 'experiments', telling him that he saw religion as 'a begetter of confusion and sentimentality'.[9] For Nehru, religion was irrational and conservative, in contrast with science and socialism, from which he felt India's future should be shaped.[10] At the same time, Nehru refused to advocate force or coercion as a means through which to challenge ideas and even behaviour of which he did not approve.[11] Whereas Gandhi wrote about instances when he forced his wife Kasturba to perform certain tasks that he saw as vital for the attainment of *swaraj*, or self-rule, Nehru's autobiographical writings recorded his awe at the way in which his own wife and female relations

[6] B. R. Nanda, *Jawaharlal Nehru: rebel and statesman* (Delhi, 1995); S. Gopal, 'The formative ideology of Jawaharlal Nehru', *EPW*, 11, 21 (22 May 1976), pp. 787–789, 791–792; J. Brown, *Nehru: a political life* (New Haven and London, 2003), Part 2.

[7] J. Sarkar, 'Power, hegemony and politics: leadership struggle in Congress in the 1930s', *Modern Asian Studies*, 40, 2 (2006), pp. 333–379; S. Khilnani, *The idea of India* (London, 1998, 2003 edn), pp. 71–72, 76–78.

[8] B. Chakrabarty, 'Jawaharlal Nehru and planning 1938–1941', *Modern Asian Studies*, 26, 2 (May 1992), pp. 275–285.

[9] Nehru to Gandhi, 25 July 1933, *SWJN*, 1st Series, Vol. 5, p. 491.

[10] Nehru, *The discovery of India*, pp. 25–33.

[11] Earlier in his life Nehru did advocate force used not 'in the spirit of hatred or cruelty, but with the dispassionate desire to remove an obstruction' – Nehru, *Jawaharlal Nehru: an autobiography* (London, 1936), p. 552 – but he made 'progress by consent', not coercion, a key theme of his prime minstership – *Jawaharlal Nehru's speeches*, Vol. III (New Delhi, 1958), pp. 7–14.

took up the nationalist cause of their own accord.[12] In this sense, Nehru followed in the footsteps of liberal Indian nationalists who, though concerned by social matters, saw them as distinct from the sphere of political authority.[13] He viewed the realm of social relations as the product of changes in political and economic power structures. Rational, scientific economic planning would lead to the education of the Indian population, drawing them away from social practices based on superstition and religious ignorance.[14]

Ambedkar also advocated a transformative model of politics that would lead Indian society towards a rational, more egalitarian future. But, like the prominent anti-caste leaders who preceded him, Ambedkar's search for political change and freedom was informed not only by western political theory but also by his own experiences of the very particular dynamics of caste discrimination.[15] Ambedkar's view of politics and caste evolved over time, but by the 1940s had come to crystallise in a way that had particular repercussions for the development of the Hindu Code Bill. In his 1936 text, *Annihilation of caste*, Ambedkar described his ideal society as one founded on the universal principles of 'Liberty, Equality and Fraternity', but he had none of Nehru's confidence that all societies would or could move towards these ideals.[16] One society above all, he argued, could never adopt these principles, or any other aspect of modern government – one structured around caste.

Ambedkar saw the caste system as the antithesis of the modern state. Caste was not just un-modern: as a system that undermined economic production and human relations it was positively anti-modern.

[12] Nehru, *The discovery of India*, pp. 41–43; Som, 'Jawaharlal Nehru and the Hindu Code Bill', pp. 167–168. Gandhi forced Kasturba to give up a gold necklace that had been given to the family and also required her to take on household chores that, in most families of Gandhi's caste and class background, would have been performed by servants, such as washing clothes – M. K. Gandhi, *The story of my experiments with truth: an autobiography*; translated from the original Gujarati (c. 1927) by M. Desai (Harmondsworth, 1982), pp. 201, 208–209.

[13] Heimsath, *Indian nationalism and Hindu social reform*, especially pp. 205–229; Chatterjee, 'The resolution of the women's question'; G. Prakash, 'The colonial genealogy of society: community and political modernity in India', in P. Joyce (ed.), *Social in question: new bearings in history and the social sciences* (London, 2002), pp. 81–96.

[14] Nehru, *An autobiography*, pp. 519–527.

[15] R. O'Hanlon, *Caste, conflict and ideology: Mahatma Jotirao Phule and low caste protest in nineteenth-century western India* (Cambridge, 1985); U. Chakravarti, 'Reconceptualising gender: Phule, Brahmanism and Brahmanical Patriarchy', in K. Pawar (ed.), *Women in Indian history: social, economic, political and cultural perspectives* (Patiala, 1996), pp. 161–176; V. Geetha and S. V. Rajadurai, *Towards a non-Brahmin Millennium: from Iyothee Thass to Periyar* (Calcutta, 1998); Rao, *The caste question*.

[16] Ambedkar, 'Annihilation of caste', in *Dr Babasaheb Ambedkar: Writings and Speeches* (*BAWS*), Vasant Moon (ed.) (Bombay, 1982–2003), Vol. I, p. 57.

Caste system is not merely a division of labour. *It is also a division of labourers.* Civilised society undoubtedly needs division of labour. But in no civilised society is division of labour accompanied by this unnatural division of labourers into water-tight compartments. Caste system is not merely a division of labourers which is quite different from division of labour – it is an hierarchy in which the divisions of labourers are graded one above the other.[17]

Ambedkar did not see modern society, or the transformative process required to reach it, in solely economic, or even political, terms. Rather, he defined rational civilised society in ethical terms, in which human beings treated one another with mutual respect.[18] He saw law as a powerful tool to protect and maintain this ethical condition, though he did not see it as the driving force that could itself create modern civilisation, as Nehru viewed economic structures.[19] For Ambedkar, constitutional democracy was the cornerstone of modern society, not because of its temporal connection with the French and American revolutions (though Ambedkar drew heavily on the language associated with the democracies that they produced) but because it provided a framework for equality among all citizens, and thus for good, ethical life: 'Democracy is not merely a form of government. It is primarily a mode of associated living, of conjoint communicated experience.'[20] This was why caste and modern society, or democracy, were so incompatible.

You cannot build anything on the foundations of caste. You cannot build up a nation, you cannot build up a morality. Anything that you will build on the foundations of caste will crack and will never be a whole.[21]

Thus, Ambedkar's deeply universal view of democracy – as the condition that allowed humans to fulfil their capacity as rational, civilised, social beings – contained within it a damning critique of Hindu caste. By the later 1930s he had concluded that as long as caste survived in India, real democracy could not.

Ambedkar's emphasis on the moral or ethical aspect of modern civilisation did not mean that he was not interested in questions of political economy; quite the reverse was true. Ambedkar was a formally trained and accomplished economist, writing his Masters dissertation under the supervision of Edwin Seligman, one of the leading international proponents of progressive taxation, who played a central role in the restructuring

[17] Ibid, p. 47. Italics in original.
[18] V. Rodrigues, 'Introduction', in V. Rodrigues (ed.), *The essential writings of B.R. Ambedkar* (New Delhi, 2002), p. 18; N. Jadhav, *Dr. Ambedkar's economic thought and philosophy* (Bombay, 1993), pp. 71–74.
[19] Rodrigues, 'Introduction', pp. 32–35, 41–42.
[20] Ambedkar, 'Annihilation of caste', *BAWS*, Vol. I, p. 57.
[21] Ibid, p. 66.

of the US taxation system during the First World War, around the same time that Ambedkar studied with him.[22] This education played an important role in Ambedkar's anti-caste politics and the model of constitutional democracy he advocated. Ambedkar argued that only a strong, well-financed, representative government could ensure the proper, just functioning of rational law and democratic rights. As with his argument about caste, this theoretical view of state power was grounded in his careful study of the particular nature of government and state-building in India.

In his 1925 academic work *The evolution of provincial finance in British India*, for which Seligman contributed the foreword, Ambedkar argued that 'an irresponsible government, however sovereign, is incapable of progress'.[23] To illustrate this point, Ambedkar pointed to the British state in India, arguing that, prior to the introduction of political representation in 1919, the colonial

> Executive ... could not sympathize with the living forces operating in Indian Society, was not charged with its wants, its pains, its cravings and its desires, was inimical to its aspirations, did not advance Education, disfavoured Swadeshi or snapped at anything that smacked of nationalism ... because all these things went against its grain ... Progress involves interference with the existing codes of social life and interference is likely to cause resistance.[24]

Lacking the political support that representative governments enjoyed, the colonial government actively avoided any actions that could provoke resistance from their subjects and was thus unable to bring about social progress. Its 'financial system was ... characterised by the desire to preserve peace and order by taxing the masses and exempting the classes', Ambedkar argued. Indian finances under British rule ran counter to the arguments 'agreed by students of public finance', and scholars such as Seligman, about the need to balance the burden of taxation against the individual's means to pay.[25] Good taxation policy, Ambedkar argued, required 'elasticity'. In taxing the 'necessaries of life' such as salt, rather than luxury goods, the colonial government both laid enormous burdens on the poor and limited its own potential revenue.[26]

A financially and politically responsible Indian government would not face the same limitations, Ambedkar maintained. Such a government

[22] Brownlee, 'Economists and the formation of the modern tax system in the United States', especially pp. 405–406.
[23] Ambedkar, 'The evolution of provincial finance in British India: a study in the provincial decentralization of imperial finance', in *BAWS*, Vol. 6, p. 233.
[24] Ibid.
[25] Seligman set out this argument in works such as his 1911 *The income tax*.
[26] Ibid, p. 230.

would be willing and able to raise higher levels of taxation and to use this money to fund civic projects such as education and the development of truly 'public' utilities, such as water tanks open to all Indians, regardless of caste. The 1919 Government of India Act, and the devolution of greater financial control to elected provincial governments, was an important step forward, but it was not enough. Ambedkar ended his rousing text, exclaiming: 'In India, the political problem is entirely a social problem, and a postponement of its solution virtually postpones the day when India can have a free government subject to the mandate of none but her own people.'[27]

Ambedkar expanded on this argument in an essay written several years later, in preparation for the case he would make for Untouchable rights at the Round Table Conferences in London.[28] Ambedkar argued that the most important innovation brought by India's British rulers was the principle of equality before the law. Before British rule, Indian law was based on inequality:

> Inequality was the soul of the Law of Manu. It pervaded all walks of life, all social relationships and all departments of state. It fouled the air and the Untouchables were simply smothered. The principle of equality has served as a great disinfectant. It has cleansed the air and the Untouchable is permitted to breathe the air of freedom.[29]

Yet equality in principle had not produced equality in practice. Untouchables still faced discrimination because of practices that separated them from 'free' Indian society. They were not able to drink water from public wells, to gain entry to schools, to dine with or marry people outside their caste. British administrators tolerated this on the basis that such discrimination arose from 'social' or 'religious' practices that were beyond the power of the state, an argument that, Ambedkar noted, upper-caste Hindu representatives were quick to support.[30] Ambedkar rejected these claims as a fallacy, arguing that in impeding Untouchables' ability to participate in public and political affairs, this discrimination was 'fundamentally civic' and directly related to the political realm.[31] British rule had brought only 'political' citizenship for Untouchables: the 'Untouchable has remained what he was before the British, namely an

[27] Ibid, p. 308.
[28] Ambedkar's 'The Untouchables and the Pax Britannica' was a 123-page manuscript prepared during his 1931 stay in London to attend the Round Table Conferences, also cited in *BAWS*, Vol. 12, pp. 77–147.
[29] Ambedkar, 'The Untouchables and the Pax Britannica', in V. Rodrigues (ed.), *The essential writings of B.R. Ambedkar* (New Delhi, 2002), p. 358.
[30] Ibid, pp. 352–355. [31] Ibid, p. 351.

Untouchable. He was a citizen but he was not given the rights of a citizen.'[32] This was a citizenship with responsibilities but no rights: Untouchables had to pay taxes that funded the infrastructure of the state and 'free' Indian society even as they were denied access to these worlds themselves. 'True' democracy did not adhere to this division: it was a form of governance that brought together social and political, economic and ethical power to create a society in which citizens not only possessed legal rights but were also able to realise them. Nehru's view that social practices would follow wider political and economic changes was precisely what Ambedkar was fighting against. He saw the Hindu Code Bill as a measure that could bring about the changes in social, or civic, practices that, he argued, had to accompany a move to establish true democracy in India.

Gender and agency in Ambedkar's anti-caste politics

Ambedkar saw the problem of caste to be intimately bound up with gender relations in Indian society. While his precise understanding of caste and its origins shifted over the course of his life, Ambedkar maintained throughout that women were both the victims of caste hierarchy and the mechanism through which these hierarchies operated. Thus, as Pratima Pardeshi has argued, Ambedkar saw the struggle against caste relations and the subordination of women as inseparable issues.[33]

Ambedkar's earliest theorisation of the relationship between gender and caste was presented in a paper entitled 'Castes in India: their mechanism, genesis and development', which he presented to Alexander Goldenweiser's anthropology seminar in Columbia in May 1916. Ambedkar dismissed the arguments of European anthropologists[34] who had seen caste in terms of occupational communities, based on social practices, arguing instead that it was the 'superposition of endogamy on exogamy' that had created caste in India.[35] Caste did

[32] Ibid, p. 357.

[33] P. Pardeshi, 'The Hindu Code Bill and the liberation of women', in A. Rao (ed.), *Gender and caste* (New Delhi, 2003), p. 346.

[34] Ambedkar summarised, and criticised, the theories of Mr Senart, 'a French authority', Mr Nesfield and Sir H. Risley. He felt that the definition of caste offered by all three men was not 'complete or correct by itself and all have missed the central point in the mechanism of the caste system. Their mistake lies in trying to define caste as an isolated unit by itself, and not as a group within, and with definite relations to, the system of caste as a whole.' 'Castes in India: their mechanism, genesis and development', in Rodrigues (ed.), *The essential writings of B.R. Ambedkar*, pp. 243–244.

[35] Ibid, p. 246.

not arise naturally but had been imposed on a diverse and exogamous community by specific social elites.

Linking this anthropological argument to his ideas about rational and ethical civilisation, Ambedkar argued that exogamy was the 'natural' state of all societies: 'there is a tendency in all groups lying in close contact with one another to assimilate and amalgamate, and thus consolidate into a homogeneous society'. To prevent such an amalgamation and to build caste groups, 'it is absolutely necessary to circumscribe a circle outside which people should not contract marriages'.[36] But controlling marital practices gave rise to new social problems. While most communities comprised a roughly equal number of men and women, this division was never perfectly exact. Husbands and wives rarely died at the same time so that there was always a number of 'surplus men and women' within the community.[37] If a 'surplus' man or woman could not find a partner in their own community, they would look elsewhere and therefore threaten the sexual boundaries of the endogamous community.[38] The sustainability of endogamous caste groups therefore rested on maintaining strictly equal numbers of men and women within the community.

The patriarchal structure of society meant that women became the victims of this drive to safeguard and manage the reproduction of caste identity, Ambedkar argued.

> From time immemorial man as compared with woman has had the upper hand. He is a dominant figure in every group and of the two sexes has greater prestige. With this traditional superiority of man over woman his wishes have always been consulted. Woman, on the other hand, has been an easy prey to all kinds of iniquitous injunctions, religious, social or economic. But man as a maker of injunctions is most often above them all. Such being the case, you cannot accord the same kind of treatment to a *surplus man* as you can to a *surplus woman in* a Caste.[39]

Widow immolation, *sati*, and its more 'practicable' counterpart, enforced widowhood, all served to contain surplus women, while the practices of child marriage had been developed to 'contain' surplus men within the community. Given the association of these practices with Brahmin communities, Ambedkar concluded that 'it needs no argument to prove what class is the father of the institution of caste'.[40] The theocratic nature of Indian society and the fact that Brahmins were the first to adopt 'a closed-door policy' meant that this class set the terms of the caste society that emerged.[41] Those communities closest to the Brahmins and which

[36] Ibid, p. 247. [37] Ibid, pp. 246–247. [38] Ibid, p. 248.
[39] Ibid, pp. 248–249. [40] Ibid, p. 253. [41] Ibid, p. 256.

valorised their religious status were the first to adopt their endogamous practices, setting off a domino effect throughout society.[42] As a result,

> Those castes that are nearest to the Brahmins have imitated all the three customs and insist on the strict observance thereof. Those that are less near have imitated enforced widowhood and girl marriage; others, a little further off, have only girl marriage and those furthest off have imitated only the belief in the caste principle.[43]

Several decades before M. N. Srinivas was to coin the term 'Sanskritization', Ambedkar had theorised the 'spread' of caste practices from upper- to lower-caste groups as a process driven primarily by the need to regulate woman's sexual activity and her very presence within the community. Women therefore held the key to caste. Ambedkar highlighted the way in which women of all caste backgrounds suffered through the practice of caste segregation.[44] On this basis, he argued that reforming women's social status was a critical part of the fight against caste, and thus also the development of democracy, but he did not argue that women themselves were the key agents or active drivers of such a reformist struggle.[45]

Ambedkar's view of women as the passive victims of caste hierarchy was not simply a reproduction of existing colonial patriarchies, it was bound up with his more complex arguments about caste agency in general. He could see *how* caste needed to be annihilated, through intermarriage, but the question remained as to who or what could begin this process of social mixing – a question that, given Ambedkar's rejection of Nehru's arguments about the inevitable relationship between economic and social progress, was a particularly pressing and difficult one. Ambedkar argued that it was the religious nature of caste hierarchy that presented the biggest block to its eradication. What he viewed as deep-set irrational faith prevented people grasping the human and rational arguments against caste discrimination. Discussing safeguards to help Untouchable communities in 1931, Ambedkar told the Lothian Franchise Committee that the division between Untouchables and caste Hindus

> is not based upon rational, economic or racial grounds ... What makes it so difficult to break the system of Untouchability is the religious sanction which it has behind it. At any rate the ordinary Hindu looks upon it as part of his religion

[42] Ibid, p. 258. [43] Ibid, p. 259.
[44] B. R. Ambedkar, *The rise and fall of Hindu woman* (Jalandhar, 1950, 4th edn 1988).
[45] This is in contrast to Periyar, who, V. Geetha argues, did see women as active agents of social change, though she notes many of his followers didn't share this conviction. 'Periyar, women and an ethic of citizenship', *EPW*, 33, 17 (25 April 1998), pp. WS9–WS15. See also Sreenivas, *Wives, widows and concubines*, pp. 89–90.

and there is no doubt that in adopting towards Untouchables what is deemed to be an inhuman way of behaviour he does so more from the sense of observing his religion than from any motive of deliberate cruelty . . . The Hindu looks upon the observance of Untouchability as an act of religious merit, and non-observance of it as sin. My view therefore is that so long as this notion prevails Untouchability will prevail.[46]

For this reason, challenging caste inequalities and removing Untouchability required not simply changing outer practices but changing inner consciousness. Yet it was not only caste Hindus who viewed Untouchability in this way. One of the key problems of caste, as Ambedkar saw it, was that its link with religion also stripped Shudras and those who suffered from caste discrimination of the rational way of thinking that could lead them to resist this oppression. This was one of the key issues he addressed in his 'Annihilation of caste'. 'Why have the mass of people tolerated the social evils to which they have been subjected?' he asked his reader:

There have been social revolutions in other countries of the world. Why have there not been social revolutions in India is a question which has incessantly troubled me. There is only one answer which I can give and it is that the lower classes of Hindus have been completely disabled for direct action on account of the wretched system of Chaturvarnya [the four-fold division of caste].[47]

It was certainly not the case that Shudras and lower-caste Hindus were inferior to the more rebellious masses elsewhere but simply that they had been denied all of the means and opportunities that would allow them to challenge this oppression:

On account of the Chaturvarnya, they could receive no education. They could not think out or know the way to their salvation. They were condemned to be lowly and not knowing the way of escape and not having the means of escape, they became reconciled to eternal servitude, which they accepted as their inescapable fate. It is true that even in Europe the strong have not shrunk from exploitation, nay the spoliation of the weak. But in Europe the strong have never contrived to make the weak helpless against exploitation so shamelessly as was the case in India among the Hindus . . . the weak in Europe has had in his freedom of military service his *physical weapon*, in suffering his *political weapon* and in education his *moral weapon*. These three weapons for emancipation were never withheld by the strong from the weak in Europe. All these weapons were, however, denied to the masses in India by Chaturvarnya.[48]

[46] Ambedkar, Note to the Indian Franchise Committee (Lothian Committee), May 1932, *BAWS*, Vol. 2, p. 494.
[47] Ambedkar, 'Annihilation of caste', *BAWS*, Vol. I, p. 63. [48] Ibid.

Unlike Gandhi, who saw the removal of Untouchability as a project that required reform of upper-caste behaviour and mentalities, Ambedkar believed that the struggle against caste depended on the transformation of Shudra and lower-caste consciousness.[49] 'The assertion by the individual of his own opinions and beliefs, his own independence and interest as over against group standards, group authority and group interests is the beginning of all reform', he argued. At the same time, he felt that reform of caste would be unsustainable without the support and participation of upper-caste Hindus, explaining that 'whether the reform will continue depends upon what scope the group affords for such individual assertions'.[50] The single most important way in which upper-caste groups could assist the removal of Untouchability, he felt, was to 'destroy the sacredness and divinity with which Caste has become invested . . . this means you must destroy the authority of the *Shastras* and the *Vedas*'.[51]

> Reformers working for the removal of untouchability, including Mahatma Gandhi, do not seem to realize that the acts of the people are merely the results of their beliefs inculcated upon their minds by the *Shastras* and that people will not change their conduct until they cease to believe in the sanctity of the *Shastras* on which their conduct is founded . . . To agitate for and to organize inter-caste dinners and inter-caste marriages is like forced feeding brought about by artificial means. Make every man and woman free from the thraldom of the *Shastras*, cleanse their minds of the pernicious notions founded on the *Shastras* and he or she will inter-dine and inter-marry without you telling him or her to do so.[52]

There are two important points to draw out of these arguments, made a few years before the appointment of the Hindu Law Committee. In the first place they demonstrate the ways in which Ambedkar saw the annihilation of caste to be at the same time a universalist, human project and one that concerned the Hindu 'community' specifically. Removing caste would make Hindu society able to develop democratic citizenship in its full, proper sense, but the act of removing it was something that only Hindus (Untouchables and, in a slightly different way, upper-caste Hindus) could achieve. Second, Ambedkar's discussion of Shudra/Dalit 'agency' in 'The annihilation of caste' helps to show why he did not see women as active agents of caste reform. Ambedkar was resolute that men and women had the same moral and mental capacities and condemned

[49] For details of Gandhi's view of caste see E. Zelliot, 'Congress and the untouchables', in R. Sisson and S. Wolpert (eds.), *Congress and Indian nationalism: the pre-Independence phase* (Berkeley, Calif., London, 1988), pp. 182–197; B. Parekh, *Gandhi's political philosophy: a critical examination* (Basingstoke, 1989), pp. 85–109; D. Dalton, *Mahatma Gandhi: nonviolent power in action* (New York, 1993), pp. 49–58.

[50] Ambedkar, 'Annihilation of caste', *BAWS*, Vol. I, p. 56.

[51] Ibid, p. 69. [52] Ibid, p. 68.

Brahmin practices that viewed women as inferior to men.[53] But his sensitivity to the social and reproductive ways in which caste hierarchy operated led him to argue that caste oppression itself was gendered, so that Hindu women of all castes faced restriction and subjugation. It was this particular oppression and suffering that both made reforming women's status central to the struggle against caste and made it harder for women themselves to be the initial drivers of such a struggle. If, after centuries of oppression, Shudras and lower-caste Hindu men lacked the individual consciousness needed to spark social reform, the patriarchal structure of Brahmin rule meant that Hindu women, particularly lower-caste Hindu women, were in an even more disadvantaged position. More than any other group, Hindu women needed to be freed from the irrational and dogmatic structures of Hindu religion, Ambedkar believed. Once caste was removed, women would become rational actors, but the continuation of caste indicated that the majority of women were enthralled by irrational and inhuman Hindu dogma. Ambedkar's handling of the Hindu Code Bill was deeply informed by this view of Hindu women as pivotal but, for the meantime, passive figures in the struggle to eradicate caste and build true democracy in India.

The Hindu Code revived: marriage reform and the making of a 'true' democratic Indian citizen

The Constituent Assembly referred the Hindu Code Bill to a joint select committee in April 1948. When the select committee met, however, it was presented not with the Hindu Law Committee's original Code Bill but with a redrafted version. It was revealed that between the legislature's decision to reintroduce the Code Bill and the first meeting of the joint select committee, Ambedkar had set up a departmental committee to revise the Code.[54] The select committee went on to propose several amendments to the redrafted Code, prompting five of the seventeen select committee members to argue that the Code had been revised to such a degree that it should be circulated for reconsideration by provincial officers and legal experts before the Assembly could debate the measure.[55] Significantly, these kinds of calls for re-circulation had been a classic tactic used by colonial officials to delay consideration of a

53 Ambedkar, *The rise and fall of Hindu woman*.

54 Tek Chand and Balakrishna Sharma's note of dissent, 'Report of the Select Committee of the Hindu Code, 12 August 1948', printed in *Supplement Bombay Government Gazette*, 3 March 1949, p. 27.

55 These were Tek Chand (East Punjab), Balakrishna Sharma (UP), M. Ananthasayanam Ayyangar (a Brahmin representative from Madras), Ramnarayan Singh (Bihar) and

potentially controversial social reform measure.[56] Ambedkar, and at least four other committee members, opposed the demand, maintaining that 'the revised draft does not make any substantial changes to the body of the original Bill, but within the framework of the original Bill it has recast it so as to be in the form in which Bills are usually presented to the Legislature'.[57] Many of the remaining committee members expressed reservations about the measure but, as had been the case with the select committee that considered the Hindu Law Committee's succession and marriage chapters during the war, difference and division among the Code's opponents allowed its supporters to push the Code Bill further along the legislative process. Thus, on 31 August 1948, the Constituent Assembly began to consider the Hindu Code Bill, in its revised form.

In spite of Ambedkar's assertions to the contrary, some of the revisions did alter the content of Code, often in ways that reflected Ambedkar's determination to use law to undermine those practices that upheld social differences within Hindu society. Unlike the earlier version, the 1948 Code Bill gave daughters and sons an equal share in their fathers' self-acquired property. Second, while the Law Committee had permitted Hindus marrying under civil rites to apply for divorce under the 'non-religious' Indian Divorce Act of 1869, the 1948 Code Bill made divorce a part of Hindu law. The 1948 Code also contained new provisions regarding the validity of customary law. Following the format of other colonial legal measures, the Hindu Law Committee had drafted the Code Bill in a manner that protected or 'saved' social customs from reform. For Ambedkar, state commitment to uphold the legal sanctity of custom and traditional practice had allowed the British administration to avoid Untouchables' demands for social reform and the 'saving' clauses were removed from the 1948 version of the Code Bill. This change was clearly highlighted in the 1948 joint select committee's report, which stated: 'We desire to put it beyond doubt that in respect of any of the matters dealt with in the Code, it should override all existing laws, whether based on custom or otherwise, unless an express saving is contained in the Code itself.'[58]

Brajeshwar Prasad (Bihar). Granville Austin, *The Indian Constitution: cornerstone of a nation* (New Delhi, 1966), Appendix III.

[56] Note on 'General Principles' for the Government of India's management of private members' Bills relating to social reform, by J. A. Thorne, 11 August 1938, NAI, Home Department, Judicial F.36/17/1935. See also the Government of India's handling of B. N. Sarma's 1918 proposal to reform the Income-tax Act, discussed in Chapter 2.

[57] 'Report of the Select Committee of the Hindu Code, 12th August 1948', printed in *Supplement Bombay Government Gazette*, 3 March 1949, p. 22.

[58] Ibid.

Ambedkar's strong feelings about customary law became clear during the select committee's discussions about the Code's impact on matrilineal Hindu law. The Hindu Law Committee had expressly exempted Marumakkatayam, Aliyasantan and Nambudri law, matrilineal schools of Hindu law followed by Hindu communities in parts of southern India, from the Code's succession laws, on the basis that under these legal systems, women already enjoyed fuller property rights than those proposed in the Code Bill.[59] Changes to the legal status of custom in the 1948 Code meant that these matrilineal legal systems would no longer be saved from reform. The select committee's report stated: 'We have omitted by a majority the exception in respect of succession to the property of a Hindu governed by Marumakkatayam, Aliyasantan and Nambudri laws of inheritance [that was included in the pre-independence draft of the Hindu Code] because, in our opinion, when uniformity is aimed at, there is no reason why any exception should be made in respect of persons governed by these systems of law.'[60] While the report explained that this reflected the 'majority view' in the committee, this revision was entirely in keeping with Ambedkar's distinctive view that the state's policy of upholding social custom had permitted the continuation of caste hierarchy and oppression.

The two women members of the committee, Renuka Ray and Ammu Swaminadhan, strongly opposed this change. While they supported some of the other revisions made under Ambedkar's guidance, they argued that to make matrilineal Hindus subject to the Code's property laws would restrict rather than benefit the women living under these legal systems. Together with another select committee member, B. Shiva Rao, a labour leader and B. N. Rau's younger brother, the women called for a clause to be introduced that expressly protected the more 'women-friendly' matrilineal legal systems from reform.[61] Ambedkar did not support this call.

The argument used in the select committee report to justify abolition of the matrilineal saving clauses demonstrated the key difference between the Hindu Law Committee's aims and interests in drawing up the Code and those of Ambedkar. The Hindu Law Committee had sought to improve women's rights in a manner that was consistent throughout all branches of Hindu law. Ambedkar was concerned about Hindu women's legal oppression, but his key aim was to eradicate the religiously justified practices through which the caste system operated in order to establish

[59] *Report of the Hindu Law Committee, 1944–45*, p. 36.
[60] 'Report of the Select Committee of the Hindu Code', 12 August 1948, p. 25.
[61] Note of dissent signed by Ammu Swaminadhan, Renuka Ray and S. Shiva Rao, 12 August 1948. Ibid, p. 31.

equality among all Hindus. For Ambedkar, the rational egalitarian force of law should always trump custom as the mainstay of caste, even when custom defended matrilineal rights. Hindu women might enjoy a better position under matrilineal systems of custom than under the main schools of Hindu law, but this status still rested on erroneous religious or customary traditions rather than on rational law. The Hindu Law Committee had presented its Code Bill as a measure to improve women's rights, arguing that its clauses were based on existing, 'women-friendly' parts of Hindu law. Ambedkar, however, saw the Code Bill as a vital step in the introduction of true democracy to India, that is the removal of not only the practices but also the logic that underpinned the caste system. In many cases, this drive for equality helped women by removing gender differences and bringing their rights on par with those of men. But there was no option, as Ambedkar saw it, to retain any of the practices that were not based on rational, legal principles, whether they were women-friendly or not.

This shift in the direction of the Code Bill project became clearer once the new Indian constitution was revealed. Ambedkar presented an early draft of the document to the Constituent Assembly in November 1948, a few months after the Code Bill select committee had submitted its report. Sharing no fewer than 200 clauses with the 1935 Government of India Act, the constitution firmly endorsed liberal principles of legal equality that had marked the rhetoric, though not the practice, of colonial government. Where the new constitution differed markedly was in its introduction of individual franchise. This secured political democracy for India, but, in line with Ambedkar's notion of true or full democracy, the new constitution also included a Bill of Fundamental Rights that committed the state to upholding the rights of its citizens. While the Rights were based on the resolution that Nehru had navigated through the 1931 Congress session at Karachi, they also bore witness to Ambedkar's influence over the constitutional process: Article 15 of the Rights promised that 'the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them', while Article 17 declared, '"Untouchability" ... abolished and its practices in any form ... forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.'

For Ambedkar, the Rights did not simply reflect political ideals, they provided him with a legal arsenal to secure the ethical revolution that he felt was required to bring true democracy to India. When legislators complained that the Code Bill undermined Hindu tradition and religious identity, Ambedkar argued that the Fundamental Rights had placed a

legal imperative on the Assembly to pass the Code Bill. Hindu law and custom contravened the rational principle of equity that legislators had endorsed as a building block for the new nation. As a result, Hindu law was *ultra vires* of the new constitution. As Ambedkar told the Assembly:

> Any one who has studied Hindu Law carefully will have to admit that apart from the many defects which the Hindu Law has, there are principles in the Hindu Law which discriminate between *Suvarna* castes and the *Shudras*. They also discriminate between a male Hindu and a female Hindu . . . It is therefore quite clear that parts of the Hindu Law will be in conflict with the provisions of the Constitution.[62]

For Ambedkar, the purpose of the Hindu Code Bill was to ensure that the political rights of the constitution could be realised by citizens in their everyday, civic life. This required reforming Hinduism in line with modern democracy, meaning the complete eradication of all aspects of caste hierarchy, the institution that many, including Ambedkar, identified as the hallmark of Hinduism itself.[63]

From its introduction to the legislature, the post-independence version of the Code met with cries of 'religion in danger' from a substantial number of high-caste legislators. Of these, many made direct reference to Ambedkar's own caste status, insinuating, or even stating explicitly, their belief that his Mahar status made him unfit to deal with the traditionally Brahmin or high-caste domain of Hindu legal judgments. Ambedkar was accused of undermining tradition and corrupting Hindu law, an argument that seemed to draw on the concepts of pollution and cleanliness that underpinned practices of Untouchability itself. Claiming that 'the entire fabric of the [Code's] rules of devolution is based on anti-Hindu ideals', Pandit Mukut Bihari Lal Bhargava, representing Ajmer-Merwara, implicitly questioned Ambedkar's Hindu credentials, arguing that the Bill reflected 'criterion' that was 'not indigenous . . . not Hindu, not Indian'.[64]

> Sir, I shall admit that every provision in this Bill has got a stigma which is anti-Hindu and therefore cannot be acceptable to any Hindu. To me this Bill is an insidious effort on the part of its sponsors to take the Hindus out of their Indian moorings and to launch them on foreign waters of Arabia and Jerusalem.[65]

Later that day, Sjt Rohini Kumar Chaudhuri exclaimed: 'Can anyone tolerate the idea of a non-Hindu being an authority on Hindu Law and

[62] 19 December 1949, *CAI(L)D*, Vol. VII, Part II, p. 790.
[63] M. S. Gore, *The social context of an ideology: Ambedkar's political and social thought* (New Delhi, 1993), pp. 217–221, 234–239; V. Rodrigues, 'Introduction', in Rodrigues (ed.), *The essential writings of B.R. Ambedkar*, pp. 26–27.
[64] 12 December 1949, *CAI(L)D*, Vol. VI, Part II, p. 466. [65] Ibid, p. 473.

principles?' The comment was made during a discussion of B. N. Rau's work on the Code Bill, but there can be little doubt that Chaudhuri's remark referred as much, if not more, to Ambedkar as to the chair of the Hindu Law Committee.[66]

Though such vitriolic and personal attacks were not infrequent, the majority of legislators did not engage in them. But even those who were more sympathetic to the project of law reform in general raised questions about the potential impact of the Code on Hindu identity and religious tradition. H. V. Pataskar, a stalwart Congressman from Bombay, expressed considerable reservations about the approach to reform adopted by the Code Bill, explaining:

> The joint family system is a peculiar institution of Hindu law not known to other systems of law which are more or less based on individuals . . . The trend in the modern world is towards individualism. The joint family system is cracking in many places. I would go to the length of saying that the joint family system would not continue for all time under modern conditions. But as it is there, the question is whether we shall gradually replace it by the individual as the basis of our society or whether we shall break it up by law as is proposed to be done by this measure. If we want to break up the Hindu society suddenly, then I am afraid we shall be rocking and shaking the foundations of that society which may result in consequences unforeseen and unpredictable.[67]

Significantly, in April 1955, Nehru selected Pataskar to serve as Law Member in his government and it was under his supervision that the Hindu Code, broken up into separate Acts, was eventually passed.

While conservative Hindus viewed Ambedkar's Code Bill as threatening to Hindu identity, Ambedkar's drive to construct a single, coherent body of Hindu law (rather than custom) seemed at moments to be compatible with the idea that there existed a single, united Hindu community. Upper-caste Hindu nationalists had long expounded a notion of all-Indian Hindu identity that celebrated their own elite practices.[68] Ambedkar rejected all such displays of caste dominance, but did not reject the concept of Hindu identity itself. Indeed, Ambedkar's model of true democracy required that the state acknowledge and define Hindu society in India. To legislate for all Indians as if they were already

[66] Ibid, p. 478. [67] Ibid, p. 488.

[68] U. Chakravarti, 'Whatever happened to the Vedic dasi?: Orientalism, nationalism and a script for the past', in K. Sangari and S. Vaid (eds.), *Recasting women: essays in colonial history* (Delhi, 1989), pp. 27–87; Sarkar, *Hindu wife, Hindu nation*; A. Malhotra, 'The body as metaphor for the nation: caste, masculinity and femininity in the Satyartha Prakash of Swami Dayananda Saraswati', in A. A. Powell and S. Lambert-Hurley (eds.), *Rhetoric and reality: gender and the colonial experience in South Asia* (New Delhi, 2006), pp. 121–153.

equal would not bring about the social empowerment or democratic citizenship for which he strived. As Anupama Rao has shown in her discussion of the formulation of Dalit rights after independence, Ambedkar wanted the state to accept and recognise caste hierarchy as a feature of Hindu society in order to eradicate it but also provide compensation for the injury and violence that generations of Untouchables had suffered as a result. Indeed, Dalit identity itself, derived from the Sanskrit term meaning ground down or broken, reaffirmed this tension, being both a way of claiming empowerment (in distinction to Gandhi's term *harijan* or children of God) and also reaffirming the historically subordinate position of Untouchables.[69]

Thus, Ambedkar's vision of caste-free democracy required the Indian state to take on a more involved relationship with the particularly divided and oppressive nature of Hindu society than it had with other, supposedly less caste-bound, religious groups. Throughout his time as Law Member, many legislators called on Ambedkar to expand the Code Bill project to build a uniform civil code for all Indians. Some argued that to pursue only Hindu law reform was communalist and discriminated against one community alone.[70] Ambedkar's rejection of these arguments demonstrates that he saw the Code Bill as a measure to reform the peculiarly Hindu problem of caste rather than the more general problem of women's rights, which could affect women of any religious community.

The tension that Rao has identified in Ambedkar's vision of Dalit empowerment applied also to his attitude towards the Code Bill. He wanted to annihilate caste practices, not the concept of Hindu identity, as to do this would deny the suffering that Untouchables had endured for so long. He saw the Code Bill as a means to build another version of Hindu identity based on rational law, which dismantled and made illegal not simply the practice of caste but all the religious sanctions that were seen to legitimate this hierarchy. Ambedkar's rejection of matrilineal custom shows how far he was willing to go to prevent the possibility that caste custom could prevail in the Code Bill. But he seems to have been less concerned about the way in which the Code affected differences in social practices that did not relate to caste, for example different regional customs. In terms of marriage law in particular, Ambedkar's focus on

[69] Rao, *The caste question*, especially pp. 15–27.

[70] Shri Rohini Kumar Chaudhuri (representing Assam), 9 April 1948, *CAI(L)D*, Vol. V, No. I, p. 3649; K. Santhanam (Madras), 12 December 1949, *CAI(L)D*, Vol. VI (November–December 1949), pp. 482–483; H. V. Pataskar (Bombay), ibid, pp. 460–491. See also Som, 'Jawaharlal Nehru and the Hindu Code Bill', pp. 172–173; Kishwar, 'Codified Hindu law', pp. 2157–2158; Sangari, 'Gender lines', p. 24.

legal uniformity defined a clear set of Hindu marital practices that did much to undermine caste bias, while heightening regional differences, giving greater legitimacy to north Indian Hindu practices over those followed in southern India.

Hindu identity and marriage in Ambedkar's Code

In redrawing the Code Bill after independence, Ambedkar devoted more energy to the clauses relating to *who* one could marry than to those dealing with *how* one could marry, though of course the two were intimately connected. Variations in marriage rituals reflected, and served to perform, differences between caste groups – with the practices of upper-caste groups tending to follow textual dicta more closely. The precedence given to textual sources in colonial understandings of religion meant that upper-caste marriage rituals were seen as more truly Hindu, compared with the non-textual-based practices of lower-caste groups, which were defined in terms of custom.[71] As discussed in the last chapter, the Hindu Law Committee's drive to establish a clear body of codified law led it to set out two forms of marriage: one 'religious', the other 'civil'. The forms of these marriages very much reflected colonial perceptions of what constituted Hindu religious practice, as well as the upper-caste identities of the Law Committee members, so that the religious ceremony was based on Brahminical traditions such as the *saptapadi* ritual.[72] As a result, the clauses of the original Code Bill legally confirmed the 'un-Hinduness' of all other marriage practices and rituals.

The Hindu Law Committee's 'civil' ceremony was also bound up with caste and regional Hindu identity, though in more complex, historical ways. Again, as the previous chapter explored, the Hindu Law Committee's 'civil' marriage ceremony was based on the 1872 Special Marriage Act, a measure that had evolved from demands for a Brahmo Samaj marriage Bill. The Committee's 'civil' marriage ceremony used the same contractual vows as the Special Marriage Act, but also reproduced the Act's provisions regarding prohibited degrees of relationship. To marry under the 1872 Act, a couple could be in no nearer relationship than that of sharing a great-great-grandfather, or great-great-grandmother.[73] This condition was in line with the exogamous practices and notions of

[71] Sen, 'Offences against marriage', pp. 80–88; Sarkar, *Hindu wife, Hindu nation*, pp. 39–52. See also the discussion of textual sources and colonial readings of Indian religion in Chapter 1.

[72] Literally meaning 'seven steps', the *saptapadi* ceremony involves couples making a marital vow after taking seven steps together.

[73] Mody, 'Love and the law', p. 233.

prohibited degrees of relationship adhered to by Hindus in Bengal (where the Brahmo Samaj was based) and by high-caste Hindus in north and western India. In her study of marital practices in late-colonial Bengal, Rochona Majumdar notes that the original draft for the marriage Bill drawn up by Brahmo Samaj members specifically retained the prohibited degrees of relationships that were customarily followed by Bengali Hindus.[74] This insistence seems to have come in direct response to Henry Maine's attempts to transform the Samaj's Bill into a measure that would enable marriages among Indians who objected to and renounced religious ritual and custom rather than Samaj members only. As Majumdar points out, the Samajists' reaction demonstrates the way in which notions of custom and ritual informed contemporary understandings of what constituted legitimate marriage and collective identity, even among reformist groups. To reject all forms of custom, particularly those relating to notions of kinship and community, seemed to undermine the validity and purpose of marriage.[75]

While marriages among near relatives were viewed with disdain in eastern and much of northern India, marriages between uncles and nieces were common among Hindus in southern India, though less so among the higher-ranking caste groups in this region.[76] Many non-Hindu communities also tended to marry relatives who were in a nearer degree of relationship than the 1872 Act prescribed. Inter-cousin marriage was reasonably common among many Indian Muslim communities, as it provided a means of maintaining property within the family in the face of the strict interpretation of Islamic property rights in the colonial courts.[77] The provisions regarding degrees of relationship in the Special Marriage Act were, therefore, highly problematic for a supposedly 'secular' measure, but the regional, Bengal-centred focus of the debates about the Act, and the fact that so few marriages ever took place under its provisions, seem to have prevented attention being drawn to this discrepancy.

[74] Majumdar, *Marriage and modernity*, p. 178.

[75] Ibid, Chapter 5. See also Sreenivas's discussion of ritual in the marriage ceremonies that were conducted by Periyar's Self Respect Movement in their campaign against caste hierarchies, *Wives, widows and concubines*, pp. 82–93. On the way in which religious community identity still plays a critical role in 'secular' marriage practices in contemporary India today see Mody, 'Love and the law', pp. 223–256.

[76] K. M. Kapadia, *Marriage and family in India* (Bombay, 1955), Chapter 6; T. Dyson and M. Moore, 'On kinship structure, female autonomy, and demographic behavior in India', *Population and Development Review*, 9, 1 (March 1983), pp. 44–45, 56, fn. 22.

[77] See Chapter 1; J. Aschenbrenner, 'Politics and Islamic marriage practices in the Indian subcontinent', *Anthropological Quarterly*, 42, 4 (October 1969), pp. 305–315.

The Hindu Law Committee issued even more detailed regulations regarding marriage between consanguine relations than had been the case under the Special Marriage Act, moving between both 'traditional' scriptural precedent and a more contemporary language of biological relations. Whereas the 1872 Act had regulated in terms of generational links, the Law Committee's Code expressly stated that 'two persons are said to be within "the degrees of relationship prohibited by this Act" if they are related by blood to each other lineally, or as brother and sister, or as uncle and niece, or as aunt and nephew'.[78] The Law Committee may not have realised the impact of this decision on south Indian Hindu communities – B. N. Rau, Dwarka Nath Mitter, J. R. Gharpure and R. V. V. Joshi, the members of the Committee who drew up the original marriage provisions of the Code in 1942, came from regions in the east and west of India. It was not until 1943 that a south Indian Hindu was present on the Committee at all when, at the end of the year, T. R. Venkatarama Sastri, a lawyer from Madras, took over Joshi's post. The Brahmin Tamil lawyer appears to have been little interested in defending lower-caste south Indian customs.[79]

The Law Committee also prohibited marriage between *sapindas*, a specific term used in the smriti texts to define cousin relationships traced through the lines of maternal and paternal ascent.[80] Later Hindu juridical texts had offered different descriptions of the exact limits of the *sapinda* relationship, but the Hindu Law Committee's Code set out expressly that *sapindaship* 'extends as far as the fifth generation (inclusive) in the line of ascent through the mother and the seventh (inclusive) in the line of ascent through the father'.[81] However, the Committee did decide to abandon regulations relating to marriage between another set of 'Hindu' relationships – those based on *gotra* and *pravara*. It was felt that these terms had become the subject of so much complex legal debate that it was no longer clear whether they defined close 'family' bonds or a looser relationship based on 'blood'.[82] Rather than try to resolve this conflict, the Committee opted to abandon the terms. They did not, however, favour such a reformist approach in terms of marriage between caste groups: the Committee set out that a couple must be of

[78] Section 2(d), 'A Bill to amend and codify the Hindu Law relating to marriage', *Gazette of India*, Saturday 30 May 1942, p. 115.
[79] See Chapter 4.
[80] Derrett, *Religion, law and the state in India*, p. 105.
[81] Section 2(c), 'A Bill to amend and codify the Hindu Law relating to marriage', *Gazette of India*, Saturday 30 May 1942, p. 114.
[82] P. D. Deshmukh, 'India and Burma: central legislature – review of legislation', *Journal of Comparative Legislation and International Law*, 30, 1/2 (1948), p. 111.

the same caste to have a sacramental marriage but made no such ruling in terms of civil Hindu marriages.

When Ambedkar took over the Code Bill project, one of his first moves was to abolish restrictions on inter-caste marriage from all sections of the Bill – allowing Hindus of any caste or sub-caste to marry under either the civil or religious (renamed *dharmik*) marriage rites. He defended this move on the grounds that these changes were permissive only and simply removed legal restrictions for those wishing to marry outside their caste, rather than forcing all Hindus to do so.[83] He also removed the rules that made the validity of a *dharmik* marriage dependent on the performance of the upper-caste *saptapadi* ceremony, with the revised Code stipulating instead that *dharmik* marriages could be held according to the 'rites and ceremonies of either party' – meaning that Ambedkar did accept the legitimacy of custom in one area of the Bill, though only in order to remove the upper-caste dominance established by the Hindu Law Committee. Ambedkar followed the Law Committee in excluding regulation of *gotra* and *pravara* relationships from the Code Bill. The revised Code Bill maintained the Committee's clear definition of *sapindaship* but applied these provisions to *dharmik* marriages only – in line with Ambedkar's views about exogamy, a Hindu couple could now marry under the civil part of the Code Bill regardless of their *sapinda* relationship.[84] Presented in apparently 'rational' biological terms rather than those of religious scripture, the Law Committee's regulations regarding 'prohibited relationships', with their direct bar on uncle–niece marriages, do not seem to have been revised or removed from either the *dharmik* or civil marriages of the 1948 version of the Code.

The decision to retain the reference to *sapindaship* in *dharmik* marriage and the explicit rules relating to prohibited degrees of relationship may have been an attempt to secure conservative support for the move away from shastric rulings regarding prohibited relationships, though it failed to have such an effect. Even within the select committee that worked with Ambedkar to reform the Code there was strong criticism of these changes. Tek Chand of Punjab and Balkrishna Sharma of UP appended a note of dissent to the select committee's final report, explaining: 'While we support the incorporation in the Code of the provisions relating to civil marriages between Hindus . . . the rules of propinquity and affinity should be the same as in sacramental marriages.'[85] Hailing from northern India, the bar on marriage between *sapindas* was seen as perfectly in keeping with 'true' Hindu practices for these legislators. This feeling may

[83] 24 February 1949, *CAI(L)D*, Vol. II, Part II, pp. 821–852.
[84] 9 April 1948, *CAI(L)D*, Vol. V, Part II, p. 3631.
[85] 'Report of the Select Committee on the Hindu Code', 12 August 1948, p. 28.

have been heightened in the communalised context of post-partition India as north Indian Hindus sought to rebuild their patriarchal authority and stabilise their Hindu identity in contrast to local Muslim practices, but it was also regional power struggles between Hindu elites that drove discussion about marriage regulation in the Code.

The impact of the partition and the nostalgia it had generated in attitudes towards 'traditional' family relationships made many upper-caste north Indian Hindus particularly sensitive about calls for marriage reform. The difference between the rules governing civil and *dharmik* unions was presented by many critics of the Code Bill as a difference between 'true' Hindu practices and false or corrupted ones. The Hindu nationalist, Delhi-based journal *The Organiser* carried a spoof letter to the editor asking, 'Can a man marry his son's widow or a woman her daughter's widower? Yes this is possible. The great Hindu Code, applauded as the 138th Smriti by one of the MPs will permit such marriages.'[86]

In many cases discussions about the social, and religious, propriety of the changes made in the Code Bill were framed in terms of the south/ north Hindu divide. Of course, it was not only juridical debates about *sapindaship* that separated north and south Indian Hindus. Southern India was one of the main bastions of the anti-Brahmin movement, with members of the Self Respect Movement adopting a specifically Dravidian identity in favour of a Hindu one.[87] While Ambedkar did not comment on such developments, either implicitly or explicitly, other legislators may have seen the decision to remove *sapindaship* from the civil marriage laws as part of a wider, anti-Brahmin assault on caste relations. Certainly many of those who criticised the Code Bill in regional terms were themselves Brahmins. Speaking against the Bill, Dr Syama Prasad Mookerjee, a Brahmin Hindu representative from Bengal and then Minister for Industry, expressly raised the issue of south Indian Hindu marriage partnerships and kinship relations to discredit ideas about the supposedly progressive nature of this community. 'Somebody said, when I was speaking earlier,' he explained,

> that south India was specially progressive and many of the laws which we are considering are already in existence there today. I say good luck to south India. Let south India proceed from progress to progress, from divorce to divorce. I have absolutely no quarrel with south India but why force it on others who do not want it?[88]

[86] *The Organiser*, 13 March 1950, Vol. III, No. 29.
[87] Sreenivas, *Wives, widows and concubines*, Chapter 3.
[88] He went on to read out a letter sent to him from a gentleman in Nuzwid, Kistna district, that protested the impact of the Code Bill on the south Indian custom of uncle–niece marriage, explaining that this was 'just, by the way, for those who were talking about the progressive nature of the people living in those territories. Naturally they have gone very

Pandit Mukut Bihari Lal Bhargava also criticised south Indian Hindu customs regarding contact between a married daughter and her natal family. While the strict patrilocality of marriage practices in northern India meant that daughters, once married, had little contact with their natal families, in cases where daughters married men who were closely related to their natal family she was more likely to maintain closer relations with her own parents. Discussing the devolution of woman's property, or *stridhana*, under the provisions of the Code, Pandit Bhargava argued that while it might be custom or usage in southern India for a family to accept property from their daughters,

in my part of the country, an overwhelming majority will be opposed to the idea. They cannot even imagine receiving any inheritance from the daughter. Therefore the entire fabric of the rules of devolution is based on *anti-Hindu* ideals.[89]

Pandit Bhargava argued that to grant daughters a share in the family estate would go 'hand in hand with widening the scope of the right to contract marriage with first cousins', a practice he associated with Egyptians, Greeks, Romans but above all Muslims. From 'the Hindu point of view', he argued, inter-cousin marriage 'would be a calamity which no Hindu family can tolerate'.[90]

By the turn of the 1950s, therefore, the notion that south Indian Hindu law was more progressive than its northern counterpart had become less clear-cut. Whereas debate about gender equality had helped to spark the Code Bill project in the late 1930s and 1940s, after independence the Hindu character of an all-India legal system became the dominant issue in legislative discussions about the Code. In this context, southern Hindu marriage practices were associated with non-Hindu and especially Islamic practices. In contrast, the patriarchal practices of the north and west were presented as truly and authentically Hindu. Ambedkar fought vociferously to defend the changes to the Code Bill in terms of caste equality, but he made no explicit reference to the regional differences in Hindu law or to the social hierarchies that many other legislators saw them to reflect.

In early 1949, with debate about the Code at a virtual stalemate, Nehru proposed to Ambedkar that it might be more productive to move discussion of the measure outside the legislature, and to hold informal meetings

far ahead ... Those who may follow him may consider it absolutely progressive.' 17 September 1951, *CAI(L)D*, Vol. XV, Part II, Cols. 2716–2717.

89 12 December 1949, *CAI(L)D*, Vol. VI, November–December 1949, p. 470. Emphasis added.

90 Ibid, p. 467.

between Ambedkar and 'persons chiefly interested in the Bill either way'.[91] Nehru's faith in economic change to bring about social reform in the longer term made him more willing to compromise on its provisions than Ambedkar. 'As you know,' he wrote to Ambedkar in March 1949, 'I am entirely in favour of the Bill, but I want to proceed in a manner so as to lessen or tone down opposition, not only in Parliament but also outside.' Ambedkar finally accepted Nehru's proposals and on 19 December Nehru put a measure before the Assembly that proposed to continue the debate in more informal discussion 'and not to vitiate the atmosphere by acrimonious debate any more at this stage'. It was supported.[92]

Interested parties inside the legislature and representatives of non-parliamentary groups with strong views on the Code were all invited to attend an informal conference to be held in April 1950. In spite of Nehru's hopes that moving debate outside the legislature might help to ease some of the tension surrounding the Code Bill, the government's plans were beset with problems from the outset. The announcement that the conference would be convened on 14 April generated a shower of petitions complaining that this date clashed with that of the sacred Kumbh Mela festival to be held at Haridwar.[93] As a result the conference was moved to 20 April, only to be overshadowed by reactions to the Liaqat– Nehru pact to safeguard minorities in India and Pakistan, signed a few days before Ambedkar was due to convene the meeting.[94] The Government of India's display of diplomatic concord with Pakistan sparked protest from two of the most conservative and outspoken opponents of the Code within the government, Dr S. P. Mookerjee, and Mr K. C. Neogy, who immediately tendered their resignation. After a flurry of correspondence between the two ministers and their colleagues,[95] Mookerjee made his official speech of resignation before the legislature on 19 April.[96] Coming so soon after the Kumbh Mela date clash, the minister's criticism of the government for ignoring Hindu

91 Nehru to Ambedkar, 20 March 1949, *SWJN*, 2nd Series, Vol. 10, p. 327; Nehru first proposed to hold an informal meeting to discuss the Code Bill on 26 February 1949, ibid, pp. 326–327.

92 19 December 1949, *CAI(L)D*, Vol. VII, Part II, p. 784.

93 *Hindustan Times*, 4 and 12 April 1950.

94 Chatterji, *The spoils of partition*, pp. 128–129.

95 Correspondence between Nehru, Mookerjee and Amrit Kaur, 3–19 April 1950. S. P. Mookerjee Papers NMML Subject File (V–VII Instalment), F.8.

96 He made his speech on the morning of the 19th and left Delhi for Bengal that afternoon in demonstration of his support for Hindu refugees coming across the border from East Pakistan. Letter from Mookerjee to Nehru, 19 April 1950. S. P. Mookerjee Papers NMML Subject File (V–VII Instalment), F.8.

sentiment in signing the Pact provided further ammunition for those who argued that the government had shown complete disregard for Hindu culture and tradition in their support for the Code. These protests made Nehru anxious to win over opponents of the Code so as to defend the Congress's claim to represent not one section of society but the nation as a whole. Ambedkar was therefore forced to take on a more conciliatory position during the April conference, which was marked by an atmosphere of conservatism.

Ambedkar presided over the three-day conference, which comprised thirty representatives, the majority of whom opposed the Code. Many of the groups which had supported the Code Bill previously, and in particular the national women's groups, were not present.[97] Discussion focused most heavily on questions of property rights, including the joint family, women's property and the question of rights to agricultural land, as well as divorce, monogamy and the regulation of marriage partners. Ambedkar eventually made a number of concessions to these different areas of the Code. Even so, opposition both to the Code and to Ambedkar's patronage of it remained strong. The April conference was accompanied by popular demonstrations in the capital against the Code. As representatives gathered for the first day of discussion, 130 people were rounded up and arrested in Parliament Street, following a protest outside the Assembly House.[98] Demonstrations and agitations continued for the duration of the conference, with forty people being taken into custody on 24 April, on the orders of the District Magistrate.

Having already been pressed to back down on what he viewed as the most important provisions in the Code, the continuing public protests proved too much for Ambedkar. While he had complied with Nehru's appeals at the beginning of the year to strive for unity and consensus, by early May his frustration began to show.[99] That month saw the publication of unconfirmed reports that Ambedkar had called on Untouchables to reject Hinduism and convert to Buddhism.[100] Though these claims were played down and Ambedkar himself did not convert in this period, these stories served to reinforce views that the Law Member and his

[97] Ambedkar had explained earlier to his legislative colleagues that the government had invited only women's organisations 'such as were not very favourable to the Bill'. *Hindustan Times*, 4 April 1950.

[98] *Hindustan Times*, 22 April 1950.

[99] On 12 January, in a speech in Bombay, Ambedkar called upon the Scheduled Classes to 'give up their "political aloofness" and co-operate with other communities in "strengthening our newly won freedom"', albeit in a manner which would maintain the separate entity of the Schedule Caste Federation. *Hindustan Times*, 13 January 1950.

[100] *Hindustan Times*, 4 May 1950; *Organiser*, 15 May 1950.

Code were opposed to 'true' Hindu sentiment. By early June, the scale of the anti-Code Bill *satyagraha* had grown, with the Hindu nationalist press reporting figures of '20–30 *dharamvirs* ... arrested daily'.[101]

Continued opposition to the Code in the legislature compounded Ambedkar's frustration. The Code Bill was reintroduced in February 1951, but after several months of debate, the Assembly had still failed to move beyond consideration of the initial clauses. In an attempt to speed up the process it was decided that the legislature would consider the marriage provisions alone and leave the highly controversial issue of succession to a later date, but debate remained just as slow.[102] As the Congress prepared for India's first general election, Nehru came under pressure from other senior Congress leaders to drop the controversial Code, with President Rajendra Prasad threatening to veto the Code Bill even if it was accepted by the legislature.[103] On 25 September, it was announced that the Code Bill would be postponed indefinitely. Ambedkar resigned two days later. In his resignation speech, delivered on the steps of the Legislative Assembly rather than inside its chamber, he criticised the government's failure to push the Bill's passage harder and blamed Nehru personally for allowing party politics to take precedence over the Code. 'After a life of four years,' he mourned, the Code 'was killed and died unwept and unsung.'[104]

Ambedkar's legacy for marriage reform

By late 1951, Ambedkar's dreams of creating true democratic citizenship in post-independence India had come to an end, but the Code Bill project had not. The first general elections had secured Congress's place

[101] *Organiser*, 12 June 1950. The Hindi term *dharamvir* translates literally as a supremely righteous or virtuous person.

[102] From Nehru to Satya Narayan Sinha, Minister of State for Parliamentary Affairs, 14 September 1951, *SWJN*, 2nd Series, Vol. 16, Part II, pp. 383–384.

[103] Rajendra Prasad had voiced doubts about the Bill from its introduction to the Constituent Assembly. Writing to Nehru towards the end of July 1948, he argued that a measure which would introduce some 'very fundamental and far-reaching changes in the Hindu law ... need not be passed by the Constituent Assembly sitting as a Legislature', which was 'a make-shift arrangement'. Prasad to Nehru, 21 July 1948, *Rajendra Prasad Correspondence and Selected Documents*, Vol. 9, p. 220. Stressing this point in a letter written a few days later, he urged the withdrawal of the Bill in order to avoid a major crisis in 'the Party and in the country on a matter which cannot on its merit claim the priority that belongs to so many other things which we have not been able to take up'. Prasad to Nehru, 24 July 1948, ibid, p. 240. See also H. M. Pandit, *The PM's president: a new concept on trial* (New Delhi, 1974), appendices I, II and III.

[104] B. R. Ambedkar, *Selected speeches of Dr. Baba Saheb B. R. Ambedkar, compiled by Bhagwan Das* (Sullundur City, 1963), Vol. I, p. 78.

as the most powerful party in the legislature. Nehru read this as public backing for his government's agenda, including the Hindu Code Bill. Following his constitutional tussle with Prasad, it is significant that Nehru used the Presidential Address to the newly elected parliament on 16 May 1952 to announce his government's decision to reintroduce the Code Bill to the legislature. As Prasad told the new assembly, the Code was to be divided into separate parts 'so as to facilitate its discussion and passage'.[105] The new Hindu Law Acts, as the divided Code Bill came to be known, revised the more controversial parts of Ambedkar's Code but retained some important aspects of his reform drive, including legal uniformity. Ambedkar's successor as Law Member, C. C. Biswas, did not relate legal uniformity to the abolition of caste in the same way that Ambedkar had. Rather, legal uniformity was celebrated as a tool that could help to strengthen and integrate Indian society by defining more clearly a single model of Indian family life.[106]

The outcome of the 1952 elections was pivotal in shaping the development of Hindu marriage law. From the First World War onwards, India's constitution had been constantly redrafted and reformed, preventing representatives from any one region of India from exerting commanding authority over the political stage. As explained in the previous chapter, the 1950 constitution firmly established the political dominance of the most populous, Hindi-speaking, north Indian states. The Congress enjoyed its most significant electoral victories in precisely these regions, even as it conceded a considerable number of seats in the south and in parts of eastern India.[107] More divided than their northern colleagues and largely outside the government, the south Indian Hindu representatives now had even fewer opportunities to defend their practices in the Code Bill debates.

The four Hindu Law Bills were accompanied by a measure to amend the 1872 Special Marriage Act. The amendment made divorce provisions part of the Special Marriage Act itself and introduced new provisions regarding registration of marriages. The new Acts upheld changes to regulations about marriage between prohibited relations that Ambedkar had made in the wake of the 1950 Code Bill conference.[108] The bar on marriage between *sapindaship*, as defined by the Hindu Law Committee, was revived for all marriages, not only religious ones. In addition to this, the regulations relating to prohibited degrees of

[105] 16 May 1952, *PD*, Vol. I, Part III, Col. 65.
[106] T. K. Tope and H. S. Ursekar, *Why Hindu Code? A historical, analytical and critical exposition of the Hindu Code Bill* (Poona, c. 1950), pp. 4–12, 25–26.
[107] See Table 4.1. [108] *Hindustan Times*, 19 November 1950.

relationship were extended and elaborated in a First Schedule to the Bill, which expressly prohibited marriage between first cousins and uncles and nieces.[109] Framed firmly in terms of biological relations with no reference at all to scriptural or religious precedent, the Schedule presented these bars as natural or universal, rather than specific to a particular religious community or social group.

The Special Marriage Act (amendment) Bill was introduced to the legislature in July 1952, before any of the Hindu Law Bills. This seems to have been an attempt by Nehru and his government to dampen down resistance and facilitate the passage of the Hindu Marriage Act. While the Prime Minister hailed the Special Marriage amendment as a progressive measure that could consolidate national unity,[110] other representatives raised concerns about the impact of its provisions on non-Hindu Indians. Seeta Parmanand, Rajya Sabha representative for Madhya Pradesh and an active figure in the AIWC leadership, argued that the Bill discriminated against Muslims. Khwaja Inaitullah, a Muslim representative, backed up her argument, asking the government:

> Are those Muslims who live in India not your citizens? You should keep them in mind when you are making one law and you claim that you wish to make such a law that will apply to all Hindustanis, you should make good your claim. When you wish to include all of us, how can you prevent the son of one brother marrying the daughter of another brother?[111]

In the report of the joint select committee on the Bill, Sucheta Kripalani, K. A. Damodara Menon and Rajendra Pratap Sinha similarly lodged minutes of dissent, objecting to the schedule of prohibited relationships.[112] Though there was much debate about prohibited relationships under the Bill, those in favour of its provision greatly outweighed those against and questions about divorce and a suitable age limit for marriage dominated discussion. Though the arguments made by Kripalani and others ultimately failed, the fact that their objections to the Bill were on the grounds that such provisions discriminated against non-Hindu citizens reinforced the idea that the list represented Hindu practices. That the provisions also outlawed southern Hindu marriage practices was not mentioned.

[109] First Schedule, Part II, Special Marriage Act, 1954.

[110] *Amrita Bazar Patrika, Hindustan Times, Statesman*, 15 September 1954, N. C. Chatterjee Files, Vol. 12.

[111] From debate on the Special Marriage Bill in the Rajya Sabha, 28 July and 7 August 1952, cited in D. Ahmadullah, 'Prohibited relationship under the special marriage act: a lacuna', in T. Mahmood (ed.), *Family law and social change* (Bombay, 1975), pp. 64–65.

[112] Ibid, p. 65.

The Hindu Marriage Bill was introduced a few months later, on 20 December 1952. It followed parts of the pre-election Code Bill very closely, but all references to the 'civil' marriage ceremony were removed. The Hindu Marriage Bill referred simply to a Hindu marriage, which could be 'solemnized in accordance with the customary rites and ceremonies of either party thereto'.[113] Provisions for registering a marriage, which had been part of the 'civil' ceremony in the early Code Bill, were included but entirely optional. The Marriage Bill's ceremony was therefore something of a hybrid of the two forms of marriage set out in the Code Bill, creating a marriage that was performed according to religious rites but which could be given civil recognition. The Marriage Bill also followed the post-independence Code Bill's wording regarding divorce, making this part of Hindu law rather than simply allowing Hindus to avail themselves of the Indian Divorce Act. In this, and its registration provisions, the Hindu Marriage Bill followed the amended Special Marriage Act so closely that it seemed to be the 'Hindu' twin of this civil measure, or rather the latter appeared to be a 'secularised' version of Hindu law. In this amalgamation of Ambedkar's civil and *dharmik* marriage ceremonies, the Hindu Marriage Bill restored the prohibition of marriage between *sapindas* as the basis of all Hindu marriages, not simply 'religious' ones. Section 5(v) of the Bill permitted marriage between *sapindas* where 'the custom or usage governing each of [the parties] permits of a marriage between the two'.[114] While this was an important concession to inter-Hindu difference, it also reaffirmed marriage between *sapindas* as a customary practice, distinct from the truly Hindu religious practices on which the main provisions of the Bill were based.

The 'legality' and 'Hindu-ness' of north Indian marriage networks were further affirmed in another aspect of the two marriage laws, their provisions relating to void marriages. Both the Hindu and Special Marriage Acts stipulated that if a man, or woman, married when one of them had a living spouse, or if they married within the prohibited degrees of relationship, the marriage was deemed void, even if it was performed in accordance with religious rituals. This marked an important break with colonial legal precedent based on the rule of *factum valet*, which the Hindu Law Committee had included in its Code.[115] But the Acts defined a void marriage in a particular way that kept alive key aspects of the *factum valet* principle. A void marriage was not deemed to be automatically dissolved under the Acts' provisions, rather section 24 of the Special Marriage Act and section 11 of the Hindu Marriage Act stipulated that

[113] Hindu Marriage Act, 1955, § 7(1). [114] Ibid, § 5(v).
[115] See Chapter 4, fn. 65.

only a court had the power to formally annul such a marriage, even if it contravened regulations about a living spouse or prohibited degrees of relationship. While this had some basis in English law, the Acts also introduced a further requirement, which had no English precedent, that a suit for annulment could be moved only by the couple in question. This step was seen as a means to protect a couple who were happy to marry in this way against attempts by others to legally annul their union.[116] Thus, a south Indian Hindu man could marry his niece under the Hindu Marriage Act without fear of prosecution, provided she assented to the marriage. The marriage would stand, even though it was seen to violate the 'moral' norms of conjugality set out in Indian law.[117] But there were other scenarios in which this provision appeared to be less protective. In cases of bigamy, if a man married a second woman while his first wife was still alive and married to him, the second union would be legally valid until one of his wives brought a case before a court to recognise its invalidity.[118]

The passage of the Hindu and Special Marriage Acts thus had little direct impact on Indian citizens' marriage practices. As this study of the clauses relating to void marriages shows, the Acts were not an attempt by the state to actively intervene in or change citizens' social relationships. Instead, they set out a blueprint that true 'Hindu' or 'Indian' marriages should follow at a moment when both Hindu and Indian identities were being renegotiated in the aftermath of partition. Indians could conduct marriages as they wished, but they would receive legal sanction and recognition from the state only if they adhered to the ideals endorsed by the majority of state legislators. Establishing divorce as part of Hindu law, the Hindu Marriage Act drew Hindu law closer into line with what had previously been hailed as the more 'modern' contractual structures of English and Muslim marriage law. But while it 'freed' Hindu law from a position of subordination in relation to other 'modern' laws, the Act introduced new notions of legal hierarchy among Hindus, and among Indian subjects more widely. Those who followed the regulations set out in the Hindu and Special Marriage Acts were 'true' citizens of the modern, democratic Indian nation-state, while those who did not were considered immoral and less modern as a result.

[116] T. P. Gopalakrishnan, *Hindu Marriage Law* (Allahabad, 1957), pp. 131–133; P. Diwan, 'The Hindu Marriage Act, 1955', *The International and Comparative Law Quarterly*, 6, 2 (April 1957), pp. 266–269.

[117] Ibid, pp. 267–268.

[118] Sections 494 and 495 of the Indian Penal Code of 1860 differentiated between cases in which a husband told his second wife about his earlier marriage and cases where he did not.

Conclusion

The amended Special Marriage Act was finally passed in October 1954, with the Hindu Marriage Act given Presidential assent on 15 May 1955. Without recognising the overlap and interplay between the two marriage Acts, the then Law Member C. C. Biswas hailed the passage of the amended Special Marriage Act as 'a step in the right direction' towards a uniform civil code.[119] His comment reflects the degree to which the Hindu Code Bill debates had blurred the line between concepts of 'Hindu community' and 'civil society' in post-independence India. The Hindu Marriage Act did not annihilate caste differences in the way Ambedkar had hoped, but it did put the Hindu community at the heart of India's emerging democracy.

Ambedkar's view of liberal democracy as a structure that could challenge caste inequality meant that, at key moments, his view of Indian civil society or the Indian nation seemed to refer to Hindus alone. This overlap was the result of his desire to use state power to eliminate upper-caste domination and protect Untouchables from further discrimination. But in the aftermath of partition, this overlap also seemed to fit with the claims of Hindu nationalists who equated the Indian nation-state with the protection of 'Hindu' interests. Ambedkar engaged in heavy battle with the conservative, right-wing Hindu nationalists who opposed his anti-caste politics. But his own view of the relationship between democracy and liberation from caste meant that he was not able to address the way in which the revival of the Code Bill after independence seemed to align the new 'secular' state with Hindu society. Ambedkar's anti-caste politics were also important in reshaping the primary focus of the Code Bill legislation away from gender equality. One cannot doubt Ambedkar's commitment to removing discrimination against women from Hindu law, but this was motivated primarily by the fact that gender inequality played a central role in the maintenance of caste distinction, not by a deep-seated commitment to establishing legal autonomy for Hindu women. Ambedkar's attitude to the status of matrilineal law under the Code Bill reflects the fact that the annihilation of caste took precedence over gender inequality in his own political agenda.

Ambedkar's revision of the Code Bill produced outcomes that were in many ways antithetical to the politics of India's first Law Member. Far

[119] *LSD*, 19.v.1954, Cols. 7797–7799; see also Nehru's speech on the Bill, *LSD*, 14.ix.1954, Cols. 1860–1862. A Bengali newspaper also reported: 'If anyone brought forward a Bill for a common civil code, Shri Nehru said, it would have his extreme sympathy.' *Amrita Bazar Patrika*, 15 September 1954. N. C. Chatterjee Files, Vol. 12.

from undermining caste, the Hindu Marriage Act preserved the customary differences on which caste identity was based while also imposing new, regional hierarchies within the 'Hindu community'. The amended version of the Special Marriage Act affirmed this re-worked version of Hindu law as a vision of family relations to which all citizens of the new democratic state should adhere, or, more accurately, against which citizens could be judged. The marriage Acts did not force a uniform set of practices on all citizens. Rather, through provisions such as those relating to void and voidable marriages, the Acts reconfigured the division between public/political power and private/religious practice that Ambedkar so abhorred. The Acts gave citizens new rights and a notion of marriage as partnership to which they could aspire, but put the onus on individual citizens' impetus and resources to access these rights. The Acts granted women protection from bigamy and from marriage partnerships that legislators felt to be unsuitable, provided they were able to gather the financial and social support necessary to bring a law case. The 1955 Hindu Marriage Act provided new marital rights only to those women with access to their own sources of wealth. The capacity of the marriage Acts to empower citizens or alter existing social structures now rested on the outcome of the debates surrounding the Hindu Succession Act.

6 Family, nation and economy: establishing a postcolonial patriarchy

By late 1951 the Hindu Code Bill project looked set for defeat. After several years of debate, the government had succeeded in passing only the first three clauses. In the face of President Rajendra Prasad's opposition and public demonstrations outside the assembly, Nehru's decision to suspend the Code Bill debates on 25 September 1951 seemed to spell an end to the codification project. Yet only five years later, the Code, broken down into five separate Bills, had been passed into law.[1]

The passage of the Hindu Law Acts, as the divided Code came to be known, has been seen to reflect Nehru's personal commitment to social reform.[2] Writing to his chief ministers about the Hindu Code Bill on the eve of the 1951 election, Nehru argued that reform was important for the development of Indian society. 'You have to make a beginning somewhere', he told the ministers. The Code could be reformed and improved in the future, but for now 'the essential principles underlying it . . . could not be given up'.[3] While the Prime Minister may have viewed the Hindu Law Acts as important pole stars for long-term social reform, this argument alone does not seem to explain his determination to push through a measure that, at the time when he wrote to his ministers, seemed capable of destroying his party and even the constitution. Neither does it offer a satisfactory explanation for the legislature's change in attitude to the Hindu Code. The election helped to consolidate the legitimacy of the (Ambedkar-less) Congress government and its legislative agenda, but it did not bring to power a noticeably more radical

[1] The Code was revised to form the 'secular' Special Marriage Act, passed in 1954, and four Hindu law Bills: the Hindu Marriage Act passed in 1955 and the Hindu Succession Act, the Hindu Minority and Guardianship Act and Hindu Adoption and Maintenance Act passed in 1956.

[2] Sarkar, 'Jawaharlal Nehru and the Hindu Code Bill'; Som, 'Jawaharlal Nehru and the Hindu Code Bill'; Chitra Sinha, 'Images of motherhood: the Hindu Code Bill discourse', *EPW*, 42, 43 (27 October–2 November 2007), pp. 49–57.

[3] 4 October 1951, J. Nehru (general editor G. Parthasarathi), *Letters to Chief Ministers 1947–64*, Vol. II (New Delhi, 1986), p. 502.

parliament. If anything, the regional distribution of seats after 1950 produced a legislature that was more conservative in its approach to social reform. It seems likely, therefore, that in addition to Nehru's reformist aspirations, there were more immediate, concrete incentives for parliament to push for a resolution of the Code Bill project. As this chapter explores, the passage of the Hindu Law Acts was as much, if not more, to do with India's economic future as with Nehru's commitment to social equality.

Significantly, when the Hindu Law Bills were introduced to the legislature after the 1951/1952 elections, politicians argued that they bore little resemblance to the original Code Bill. Sardar Hukum Singh, a Sikh legislator from Punjab, argued that if there was greater support for the new Bills it was 'not that the public opinion has changed its attitude ... This is not the original Bill ... that Hindu Code has practically been given up by the Government.'[4] The most notable difference between the pre- and post-election measures was the introduction, in the revised Hindu Succession Act, of clauses 'saving' the Mitakshara coparcenary system.

The first half of this book situated the Hindu Law Committee's proposal to abolish the Mitakshara within a wider set of debates about Hindu property law that had arisen out of interwar colonial income tax policy. It showed how the colonial administration's insistence on taxing the HUF as a single unit was driven by imperial pressures to balance the Indian budget or produce excess capital to support British interests. While the postcolonial Indian state inherited much of the political and fiscal structure of its predecessor, independence brought about a significant shift in this aspect of the administration's fiscal outlook. As Nehru stressed to India's new subjects in his famous midnight speech, the Indian state no longer served the interests of a distant metropole but those of the Indian nation, which had now awakened.[5] In line with his own economic policies, the new Indian administration turned away from the highly conservative fiscal approach of colonial rule to develop and invest in India's economy.

The first part of this chapter looks at how and why the early postcolonial government rejected the policies that had 'squeezed' the income tax-paying classes and forced wealthy Hindu families to pay tax at the highest rates possible, though not by embracing a vision of the HUF as a collection of lower tax-paying individuals. As already discussed in Chapter 4, partition had done much to endorse the Hindu joint family

[4] *LSD*, 1954, Vol. V, Part II, pp. 7253–7254, cited in Som, 'Jawaharlal Nehru and the Hindu Code Bill', p. 189.
[5] Tryst with destiny, 14–15 August 1947, *SWJN*, 2nd Series, Vol. 3, pp. 135–136.

as a bastion of national identity and order. Furthermore, while wealthy Hindu representatives no doubt favoured policies that would lower their tax burden, they were less willing to give up the important financial and political benefits, such as its unique super tax threshold, that they had won for the HUF during the interwar tax reform debates. Post-independence agricultural reform also added powerful incentives to protect against the break-up of family structures that many thought would follow from the creation of far-reaching individual rights, for Hindu women especially. Resolving the Hindu Code Bill debates offered the administration a chance to settle these various pressures, and secure the political support and economic investment of powerful propertied citizens. Looking at the post-1950 discussions of the Code Bill and the interests that shaped them, this chapter traces the way in which the Hindu Law Acts, and other early postcolonial legislative measures, transformed the HUF from an object of suspicion and high taxation into something to be celebrated and protected as the key economic building block of a ‘modern’ Indian nation.

State revenue after independence: the Hindu family in a planned economy

Nehru’s government inherited the financial structures of a colonial state that had become even more autocratic with the demands of war.[6] As after the First World War, the Government of India chose to retain many of the supposedly short-term levies on wartime ‘excess profits’ some time after the war had formally come to an end.[7] In April 1947, at the same time that the Hindu Law Committee’s Code Bill was introduced to the central legislature, the Government of India passed the Taxation on Income (Investigation Commission) Act (Act XXX of 1947). This Act gave state officials further power to command citizens to provide information about their earnings. It also set up an Investigation Commission designed to target specific companies and individuals whom finance officials suspected of tax evasion.

Partition, and the refugee crisis triggered as a result, meant that the early postcolonial administration was as concerned about income levels as its colonial predecessor. It opted to retain the basic structure of colonial income tax policy – with its three groups of payee (company,

[6] Rothermund, *An economic history of India*, Chapter 9; Tomlinson, *The economy of modern India 1860–1970*, pp. 160–163.

[7] The Income-tax and Excess Profits Tax (Amendment) Act, 1947 (Act 22 of 1947) and the India (Adaptation of Income-tax, Profits Tax and Revenue Recovery Acts) Order, 1947 (GGO 31, dated 10 December 1947) allowed tax officials to continue to collect wartime taxes in arrears.

individual and HUF) – and even to step up finance officers' power over taxpayers; the Income-tax and Business Profits Tax (Amendment) Act, 1948 (XLVIII of 1948) revised section 34 of the Income-tax Act to allow tax officials to investigate the accounts of anyone they suspected of withholding information about their earnings. The amendment also allowed officials to investigate accounts even if the assessee had provided entirely full and correct information but where the officer

> had in consequence of information in his possession reason to believe that income, profits, or gains chargeable to income-tax had escaped assessment for any year, or had been under-assessed, or assessed at too low a rate, or had been made the subject of excessive relief under the Act, or that excessive loss or depreciation allowance had been computed.[8]

The transfer of power and the formation of a Constituent Assembly provided the new Indian representatives with a moment to reconsider the structure of federal finance that had proved so complex and divisive in the negotiations for the 1919 and 1935 Government of India Acts. But those drafting the new constitution chose to hold in place the bulk of both the political clauses and economic structures set out in the 1935 Government of India Act.[9] After the problems with the Meston Settlement, Ambedkar and his colleagues maintained the structure of divided heads, marking agricultural revenue as a tax under provincial (renamed as state) control, and income tax as a shared revenue, divided between the centre and states.

While the structures of colonial federal finance were retained, independence produced an important shift in the Indian administration's relationship with Indian taxpayers. Freed from the stranglehold of Whitehall's fiscal conservatism, Nehru's government celebrated the end of the imperial drain on Indian resources and the beginning of a new era of investment in and development of the nation's economy. Yet the Prime Minister was reluctant to rely on direct taxation to fund such state-driven investment.

The interwar years had seen Indian traders and financiers begin to play a formative role in Congress politics and, both during and after the Second World War, in policy making.[10] Indeed, many of India's

8 Radheshyam Makhanlal v. Union of India and Others, 10 August 1959, [1960] AIR, Bom 356.

9 B. Shiva Rao, *The framing of India's constitution: a study* (New Delhi, 1968), pp. 641–698; B. Shiva Rao, *The framing of India's constitution: select documents*, Vol. III (New Delhi, 1967), pp. 255–312.

10 S. Sarkar, 'The logic of Gandhian nationalism: civil disobedience and the Gandhi–Irwin Pact, 1930–31', *Indian Historical Review*, 3 (July 1976), pp. 114–146; A. Mukherjee, *Imperialism, nationalism and the making of the Indian capitalist class, 1920–1947* (New Delhi, 2002), Chapter 2.

wealthiest financiers and taxpayers had used the war to enhance their political influence within Congress but also the colonial administration. In 1944, Ghanshyam Das Birla, Purushottomdas Thakurdas, J. R. D. Tata, Ardeshir Dalal, Sri Ram, Ardeshir Darabshaw Shroff, Kasturbhai Lalbhai and John Mathai published the first edition of 'A brief memorandum outlining a plan of economic development for India', or, as it later came to be known, the 'Bombay Plan'.[11] The 'Memorandum' proposed restructuring the Indian economy in ways that facilitated national economic growth rather than imperial interests. The financiers called for investment in agriculture, but, unsurprisingly given their own business interests, their plan focused most heavily on developing Indian industry. They also argued that India's economy should be a 'mixed' one, making the state responsible for financing basic industry, the development of which required large sums of initial investment, while giving private capitalists the opportunity to develop smaller economic sectors which generated returns in the shorter term.[12] At the same time, the 'Bombay Planners' argued that the state should not rely on taxation to fund its share of the economy but should instead use the sterling reserves that India had generated during the war, foreign aid and deficit spending.[13]

Nehru did not accept the Bombay Plan in any official capacity, but there is no doubt about its influence on the development of his own economic policy after independence. Birla and Tata had long enjoyed strong links with the Congress High Command throughout the interwar period and in 1949 John Mathai became Nehru's Finance Minister.[14] There were many notable overlaps between the Bombay Plan and the first Five Year Plan, including the adoption of the principle of mixed economy and emphasis on industrial development. Indeed, the protective tariffs and prohibition of imports under the Five Year Plan created conditions in which private merchants and financiers faced little or no competition in highly profitable areas of economic growth, most notably consumer goods production.[15] In line with the Bombay Plan, the Government of India did not raise or introduce additional taxation to help fund the first Five Year Plan. In fact, after an initial high

[11] P. Thakurdas *et al.*, *A brief memorandum outlining a plan of economic development for India* (Bombay, 1944).
[12] Rothermund, *An economic history*, p. 125.
[13] Thakurdas *et al.*, *A brief memorandum*, pp. 5–6, 44–49; Rothermund, *An economic history*, p. 124.
[14] Mukherjee, *Imperialism, nationalism and the making of the Indian capitalist class, 1920–1947*, especially Chapters 2 and 11.
[15] Rothermund, *An economic history*, pp. 130–131.

Table 6.1 *Revenue and expenditure of the Government of India (in crores of rupees)*

Year	Income and corporation tax (after deducting state's share)	Land revenue	Total tax revenue	Total revenue
1950–1951	125.70	2.00	357.00	405.86
FIRST FIVE YEAR PLAN				
1951–1952	134.74	2.88	459.99	509.49
1952–1953	128.25	0.43	387.06	412.77
1953–1954	107.09	0.76	363.28	394.25
1954–1955	103.64	0.45	399.26	434.75
1955–1956	113.23	0.88	428.04	481.19

Source: Figures for 1950–1951 from *Report on Currency and Finance for the year 1954–55*, Reserve Bank of India (Bombay, 1955), pp. 170–171; all other figures from *Report on Currency and Finance for the year 1956–57*, Reserve Bank of India (Bombay, 1957), pp. 170–171.

in 1951–1952, the first year of the Five Year Plan, direct taxation collection dropped over the duration of the Plan (see Table 6.1). Indeed, direct tax levels remained fairly static throughout the 1950s, with increasing emphasis put on loans and deficit spending rather than tax collection to fund India's economic growth.[16]

By the early 1950s, Indian taxpayers and capitalists were no longer treated as targets of government suspicion by the Indian administration but as groups that needed to be cultivated and protected by government policy. The Five Year Plan required the development of a healthy economic environment in which businesses were able to generate capital for investment. With this in mind, the Government of India passed a series of measures, including the Taxation Law (Extension to Merged States and Amendment) Act of 1949, which exempted all companies, firms, persons and HUFs which invested in new industrial undertakings from

[16] By the mid 1960s India's tax revenue amounted to 12.5 per cent of its GNP, considerably less than in Brazil (21.4 per cent) or Malaysia (20.5 per cent). The greatest share of this figure in India came from indirect rather than direct taxation, which was equal to 10.3 per cent of India's national income in 1966, with direct taxation equal to only 3.2 per cent. S. N. Mittal, *Central taxation of income in India: a critical and suggestive study* (Delhi, 1986), pp. 29–30; F. R. Frankel, *India's political economy 1947–1977* (New Delhi, 2005), pp. 85–86; 147–155.

paying tax on the first 6 per cent of any profits they generated.[17] These regulations did not single out the HUF in particular, but as a structure that had the potential to hold and to invest more capital than many individuals, officials no doubt hoped that such tax breaks would induce affluent Hindu families to invest in the nation's economy. HUFs would continue to pay income tax as a collective, and thus at the higher rates, but they now enjoyed a number of financial privileges, on top of the existing special super tax threshold, which suggested that the Hindu family's jointness was something to be celebrated and rewarded by the state.

The Five Year Plan and Finance Act provided a powerful economic foil to the arguments about traditional family that had driven discussion about the Abducted Persons Restoration Act. The joint family was, on the one hand, seen as the bastion of patriarchal and religious order and, on the other, courted by finance officials as champions of the new nation's growth and economic future.[18] But even if Ambedkar's plan to abolish the coparcenary had won little support among legislators and government officials, there remained interest in the codification project more broadly. Law reform before the Second World War had done much to strengthen Hindu men's individual control over property, a change which, Jayakar had argued, greatly facilitated the transfer of capital and short-term decision making of 'modern' trade. Independence and the Five Year Plan had created exciting new opportunities for private investment, which the government was keen to encourage and financiers keen to take up. The challenge was to build an all-Indian Hindu legal system that could facilitate modern trading, while holding in place the legal basis of the HUF's unique, and financially lucrative, jointness.

Agriculture and the Hindu family

The Five Year Plan made industry the focal point of government economic policy, but Nehru and his colleagues also recognised the importance of developing what remained the largest sector of the Indian economy: agriculture. Agricultural productivity had been a matter of some concern to the government, even before independence. The disastrous outcome of the Meston Settlement had highlighted not only the political importance of income tax policy but also the stagnant condition of Indian agricultural production. From 1937, as the Government of

[17] The Taxation Law (Extension to Merged States and Amendment) Act, 1949 (67 of 1949), § 15C.

[18] Birla, *Stages of capital*, pp. 232–237.

India conceded a share of its income tax revenue to the provinces under the terms of the Niemeyer Settlement, it recognised that more needed to be done to raise agricultural output, and thus also revenue, if the restructured system of state finances was to be successful. In many regions of India, land revenue rates were hopelessly out of date. A favourable balance of trade before the First World War meant that officials felt untroubled by this state of affairs, but after the war Indian trade began to weaken at the same time as the administration was expanding the apparatus of provincial government, a situation that made land revenue a more pressing political issue.[19] It also exposed the tensions at the heart of the new constitutional reforms; the 1919 Government of India Act, and accompanying Meston Settlement, confirmed the administration's need to enhance land revenue, but the devolution of power to elected representatives also placed new limits on the government's ability to raise land rents.

The Indian representatives who entered the assemblies after the 1919 reforms recognised that the effectiveness of their new positions rested on securing good levels of revenue. But, like the Nehruvian government's attitude to income tax after independence, they were also aware that the state's financial interests had to be weighed against the interests of their own constituents and supporters. The franchise reforms that accompanied the 1919 Act had given urban business interests much greater influence over Indian politics, but these groups were not disconnected from the agricultural economy; many of the lawyer-politicians who took up legislative seats in this period were members of wealthy landowning families.[20] Consequently, the devolution of political power was not accompanied by new drives to raise land tax. As government officials tried to manage the repercussions of the Meston Settlement, they encouraged provincial legislators to support a review of land rates and taxation policies in their province. Punjab passed a land revenue bill in 1928, but legislators in other provinces resisted these suggestions.[21]

In 1926, the Government of India attempted to set up a Royal Commission to investigate the state of agriculture in India. These plans met with considerable suspicion and resistance from many provincial officials,

[19] Washbrook, 'Law, state and agrarian society', pp. 692–698.

[20] This link has been discussed in relation to the Madras Presidency in particular, see Price, 'Ideology and ethnicity under British imperial rule'; Sreenivas, *Wives, widows and concubines*, pp. 48–50; but there were clear intersects between agrarian and urban elites in other parts of the subcontinent, Sarkar, *Hindu wife, Hindu nation*, pp. 8–18.

[21] Charlesworth, 'The problem of government finance in British India', p. 523; D. Hardiman, 'The crisis of the lesser Patidars: peasant agitations in Kheda District, Gujarat 1917–34', in D. A. Low (ed.), *Congress and the Raj: facets of the Indian struggle, 1917–47* (London, 1977), pp. 47–75; Rothermund, *An economic history of India*, pp. 83–85.

who were unwilling to relinquish control over their one major source of income under the Meston Settlement. Whereas income tax collection had evolved on a centralised, all-India basis, colonial land revenue policies had been developed on a regional basis. Just as Indian professionals had cited diversity of family practices to challenge the Government of India's reading of the HUF for tax purposes, so Indian representatives who had been elected to the provincial legislatures argued that the regional nature of land revenue meant that they, and not centrally based Indian officials, were best placed to handle agricultural reform. Opposing the Government of India's calls for a Royal Commission, K. C. Roy, an elected member of the Council of State from Bengal, cited telegrams written by Bombay government officials to argue that 'the problems of agriculture are largely local in character and even the results of general research frequently require prior local investigation before they can be applied successfully to any particular area'.[22] The Commission was eventually convened but only after much cajoling and assurance from the Government of India and Viceroy Lord Reading that it would not infringe on provincial autonomy.[23]

The economic depression of the 1930s exposed the fragility of India's agricultural economy, making reform of land revenue even more politically controversial. The collapse of the international grain market early on in the crisis had affected large-scale agricultural producers but left subsistence farmers fairly untouched. It was the contraction of currency and credit facilities, the result of the Government of India's attempt to maintain the sterling:rupee ratio, that ruined subsistence producers, making them unable to pay even out-of-date revenue charges.[24] Fears of peasant unrest in the early 1930s prompted the colonial administration to change tack. Rather than call for a review of revenue rates, colonial officials began to feel that a more lucrative, and realistic, way of raising funds was to develop agricultural production itself. From 1930 onwards, government officials were gradually drawn into managing allocation of food supplies as well as development schemes such as irrigation and cooperative farming.[25] This was accompanied by a

[22] K. C. Roy represented landholders of the Chittagong region in Bengal, *CSD*, 15 February 1926, p. 63, L/E/9/1 IOR.

[23] Viceroy's speech to a conference of provincial government ministers and directors of agriculture, 7 June 1926, L/E/9/1 IOR.

[24] Chapter 3 and Rothermund, *An economic history of India*, pp. 94–98.

[25] C. J. Baker, *An Indian rural economy 1880–1955: the Tamilnad countryside* (Oxford, 1984), pp. 482–494; B. R. Tomlinson, 'The political economy of the Raj: the decline of colonialism', *The Journal of Economic History*, 42, 1 (March 1982), p. 137; Washbrook, 'Law, state and agrarian society', pp. 698–703.

shift in the administration's agrarian policies away from protecting the property rights of landowners towards a focus on protecting the position of agrarian cultivators.[26]

The Congress leadership was able to benefit from the tensions inherent in colonial agricultural policy with little direct intervention. The economic crisis left peasant cultivators and moneylenders angry and highly critical of the colonial administration. In an attempt to temper this hostility, British officials sought to use the constitutional negotiations to draw wealthy peasant cultivators closer into the structures of the colonial state: the expansion of franchise under the 1935 Government of India Act gave substantial numbers of peasant cultivators new voting rights.[27] But for many, this was too little too late. This new community of rural voters did not need to be convinced by Congress representatives that the colonial government did not protect their interests. Rather than securing rural support for the administration, the new franchise helped the Congress to secure sweeping victories across the subcontinent in the 1937 elections. Forming governments in nine of the eleven Indian provinces, Congress ministers were as reluctant as their colonial counterparts to raise revenue rates. They, too, reached out to wealthy peasant cultivators, and in the United Provinces and Madras in particular, governments passed policies that effectively hollowed out the land revenue system, leaving it a relic of government funding past.[28] Thus, land rights were in a state of flux at exactly the moment that the legislatures were considering perhaps the most comprehensive reform of family law under British rule in the shape of the Hindu Women's Rights to Property and Shariat Acts.

The 1937 personal law measures pulled in different directions to the discussions about agricultural policy. Individual inheritance rights and the division of a man's estate between female relatives created the potential to exacerbate the fragmentation of landholdings, something that was seen as one of the biggest threats to Indian agricultural productivity. In recognition of this fact, section 2 of the Shariat (Application) Act exempted 'questions relating to agricultural land' from the proposed reforms. The Hindu Women's Right to Property Act did not make a similar exemption, but the question of its application to agricultural land

[26] Ibid, pp. 694–696; P. Reeves, *Landlords and governments in Uttar Pradesh: a study of their relations until zamindari abolition* (Delhi, 1991), pp. 93–145; J. Chatterji, *Bengal divided* (Cambridge, 1994), pp. 56, 72, 104–107.

[27] Rothermund, *An economic history of India*, pp. 99–100.

[28] Baker, *An Indian rural economy*, p. 437; Reeves, *Landlords and governments in Uttar Pradesh*, pp. 220–222, 230–261. This attitude was continued by the Congress government after independence, Rothermund, *An economic history of India*, p. 128.

became the subject of legal debate as soon as the measure was passed.[29] It was precisely this kind of uncertainty, coupled with the rising levels of private legislation, that prompted the Government of India to appoint the Hindu Law Committee.

In the end, the question of whether the Hindu Women's Right to Property Act applied to agricultural land was settled by the courts rather than the Hindu Law Committee. In April 1941, three months after the appointment of the Committee, the Federal Court ruled that the Hindu Women's Right to Property Acts 1937 and 1938 were *ultra vires* of the constitution in respect of their application to land; as a subject under the jurisdiction of provincial governments, agricultural land could not be altered by legislation passed in the central assembly.[30] Presenting its call for a Code Bill, the Law Committee acknowledged that its proposals would not automatically extend to agricultural land, but suggested that provincial governors use their own legislative powers to extend the principles of any newly codified succession law to this important form of property.[31] While Committee members may have favoured the idea of a single system of succession to govern all forms of property in the abstract, the exclusion of agricultural land from their own remit allowed them to make more far-reaching proposals than would have been the case otherwise. As the Committee explained in its final report of 1947, the suggestion to dissolve the Mitakshara coparcenary was made possible by the fact that the Code Bill would not govern succession to agricultural land. 'Even we ourselves are divided in opinion' on the abolition of Mitakshara survivorship, 'and one of us has been able to agree in [sic] the particular provisions of the proposed Code only because they do not affect agricultural land.'[32]

Land, labour and family in India's planned economy

The separation of questions about women's legal rights from discussions of agricultural policy had profound implications for the way in which debates about economic policy and land reform developed

[29] The Act was passed by the Legislative Assembly before the 1935 Government of India Act, which established agricultural property as a provincial legislative subject, came into force, though the Council of State approved the Act after the new constitution was in place. As a result the Advocate Generals of India and the Provinces questioned not only the applicability of the Hindu Women's Right to Property Act to land but its validity in general, though the Federal Court decided that the gap between the two legislative houses' approval of the Act did not render it invalid in general. [1941] 2 MLJ 12 (FC) 12–32.

[30] Ibid, *Report of the Hindu Law Committee* (June 1941), p. 25.

[31] Ibid, p. 21.

[32] *Report of the Hindu Law Committee, 1944–5* (1947), p. 17.

during the Second World War. The National Planning Committee (NPC), set up by Jawaharlal Nehru, Subhas Chandra Bose and other left-wing Congress members towards the end of 1938, comprised a number of sub-committees which were asked to look into topics including heavy industry, land reform and women's uplift.[33] The Land Policy Sub-Committee's first report was a radical critique of private property and a call for the nationalisation of agricultural land,[34] but, as the rift between Gandhi and Bose threatened to divide the Congress, Nehru wrote to the NPC chair, K. T. Shah, asking that he avoid any actions that could trigger 'a premature conflict on class lines'.[35] The Land Policy Sub-Committee's next proposal was a more conservative affair, which framed discussion of reform in terms of labour rights.[36]

Under the banner of 'land to the tiller', the Sub-Committee called for the strengthening of individual land rights on the basis of self-cultivation; if one worked the land, one should own it. Subletting was to be permitted in only a few, specific circumstances. Dr Radhakamal Mukherjee, the Sub-Committee chair, set out provisions for amalgamating and restripping landholdings to create integrated plots, which were to be capped so that 'a family of average size can cultivate it effectively, and obtain its subsistence from it' without employing workers.[37] Significantly, Mukherjee also limited participation in the land restripment and consolidation programmes to those who already possessed land rights, meaning that the poor and landless would be entirely excluded from this redistribution process.[38] The Sub-Committee's proposals thus allowed

[33] B. Chakrabarty, 'Jawaharlal Nehru and planning 1938–1941', pp. 279–281; for more detailed information about the work of the Women's Sub-Committee see G. Forbes, *Women in modern India* (Cambridge, 1996), pp. 199–200; N. Banerjee, 'Whatever happened to the dreams of modernity? The Nehruvian era and women's position', *EPW*, 33, 17 (25 April–1 May 1998), pp. WS2–WS7.

[34] Interim report of the Sub-Committee on Land Policy, Agricultural Labour and Insurance, AICC Papers F.23 (KW5)/1940.

[35] Letter from Nehru to K. T. Shah, 13 May 1939, *SWJN*, 2nd Series, Vol. 9, pp. 373–374.

[36] Dr Radhakamal Mukherjee's note on land reform and the report drawn up by the Sub-Committee subsequently are not individually dated but are held in an AICC file from 1940. AICC F.23 (KW5)-1940.

[37] Paragraph 3(I), Land Policy Sub-Committee: Note by Dr Radhakamal Mukherjee, Sub-Committee chair, undated, AICC Papers F.23 (KW5)-1940.

[38] Mukherjee clearly stipulated that these programmes aimed not at redistribution but at consolidation of plots: 'Each cultivator participating in the re-stripping should receive out of the regrouped area, in exchange for his old property, an area of land of equal value and equal quality with that which he possessed before the exchange or a suitable compensation, in case such exchange holdings are not available.' Paragraph 3(IV), ibid.

for the break-up of the large estates owned by non-cultivating landlords but protected the resources, and social influence, of middling peasant cultivators against the claims of the rural poor.[39]

The Sub-Committee established cultivation as the basis of ownership, but there were some ambiguities about how the former related to the latter. Mukherjee explained that 'a peasant family in order that it may justify the protection of the State in the form of credit facilities and exemption from certain tax burdens should not occupy a holding of a size that may under normal conditions require permanent outside labour'.[40] But while cultivation was managed by the family, his discussion of succession to agricultural land was premised on the idea of a single individual worker-landowner. 'The economic holding should be heritable on condition that the heir himself cultivates the holding to the best advantage of the State. Otherwise the holding will lapse to the State', Mukherjee proposed.[41]

On this basis, the Sub-Committee called for a system of landownership and inheritance to operate aside from the succession practices of religious personal law.[42] Inheritance in this case was seen entirely in terms of the male owner-cultivator, with no consideration of women's property rights. The report seemed to differentiate between women's work as necessary for agricultural development and men's 'labour' which generated property rights in land. This undervaluing of women's unpaid domestic labour was firmly in keeping with the longer-term trends in Indian economic development.[43] Many aspects of agrarian production and the systems of cheap labour recruitment that had facilitated the expansion of precisely those industries that the NPC wished to develop further had been made possible by relationships that exploited women's domestic labour.[44] Wives, daughters and mothers stayed on in rural areas, operating as subsistence farmers in order to feed the family when husbands or fathers had migrated to the city in search of paid employment.[45]

[39] Rothermund, *An economic history of India*, pp. 128–129.
[40] Paragraph 3(II), Land Policy Sub-Committee: Note by Dr Radhakamal Mukherjee, AICC Papers F.23 (KW5)-1940.
[41] Paragraph 3(V–VI), ibid.
[42] Paragraph 6, Land Policy Sub-Committee, 'Report on Land Policy', AICC Papers F.23 (KW5)-1940.
[43] Anderson, 'Work construed'. [44] Sen, 'Offences against marriage', pp. 77–110.
[45] R. Chandavarkar, *Imperial power and popular politics: class, resistance and the state in India, c.1850–1950* (Cambridge, 1998), pp. 335–339; Sen, *Women and labour in late colonial India* (Cambridge, 1999), Chapters 1 and 2; T. Roy, *Rethinking economic change in India: labour and livelihood* (London, 2005), pp. 54–55.

The constitutional arrangement that separated discussion of family law from agricultural land rights allowed political representatives and policy advisors to ignore the important intersection between issues of agricultural labour and family structure. This was clearly reflected when the various NPC sub-committees' reports were collated for publication around the time of independence.[46] The report submitted by the Women's Sub-Committee, entitled 'Women's role in planned economy', set out a radical argument about the importance of women's individual economic independence for the emergence of a truly equal and gender-just society.[47] Many of the issues it covered, such as labour relations, maternity benefit and education, were also dealt with by other sub-committees. The very framework of the NPC therefore created the impression that women's freedom and equality sat in tension with more general goals of economic progress. Seeking to secure economic growth without igniting 'class conflict', Nehru and the NPC gave dominance to these latter goals over what were seen to be the narrower proposals of the Women's Sub-Committee.[48]

The link between labour and property rights was also raised, away from Congress policy making, in the wartime debates about the Hindu Code Bill. Responding to the Hindu Law Committee's succession Bill in March 1943, Dr P. N. Banerjea, a Hindu representative from Calcutta, warned that 'equality of status can only be real if there is equality of functions'.

> If you give a woman a right to property in agricultural land, you should expect that the woman should herself be a tiller of the soil; you should not expect that she should be the owner of the land while a man should be the tiller of the soil. Similarly, when women expect to be owners of capital, it would not be desirable for them merely to control the capital and not to manage the industry and trade.[49]

The Code Bill thus had potentially revolutionary consequences not only for family property but also for agricultural production.[50] The rules of prohibited relationships and the virilocal character of 'true' Hindu marriage practices made it impossible to give a daughter a share in her father's land without affecting agricultural yield, warned Bhai Parma Nand of Punjab, India's most agriculturally productive and prosperous province.

[46] K. T. Shah (ed.), Report; National Planning Committee (Bombay, 1949).
[47] Ibid, pp. 214–222.
[48] Banerjee, 'Whatever happened to the dreams of modernity?', pp. WS3–WS5.
[49] 30 March 1943, *LAD*, p. 1626.
[50] See also the comments of Govind V. Deshmukh, of Nagpur, 29 March 1943, *LAD*, pp. 1557–1558.

Naturally, she will bring in altogether a stranger in the family . . . in the Punjab, no agriculturalist is willing, nor would ever be willing to give a share to the daughter in land because she will bring in a new man into the family. In the case of the Hindus their daughters are married at great distances. A new man comes to that family. How can he manage to cultivate the agricultural land? If he cannot manage it he will have to sell it and he might sell it to anyone at any price, which will lead to breaking up of the family system altogether.[51]

This argument linked the Code Bill and women's property rights to high levels of land sales and absentee landholders, problems that were seen to run fundamentally against agricultural productivity.[52] Opposing calls to apply the Code Bill's provisions to agricultural land, Mr T. T. Krishnamachari of Tanjore *cum* Trichinopoly argued that to give daughters rights in agricultural land could only worsen Indian agriculture's already fragile condition. '[Land] is an important element in the economy of the country,' he told the Legislative Assembly, 'and as I foresee it today it would not be possible for any Provincial Government to allow further fragmentation of land. It will not be possible for any Provincial Government to allow division of land by people who are absentee landlords.'[53]

By April 1947, the Hindu Law Committee had come to the same conclusion. Following the Bengal Famine and the economic disruptions of the war effort, the Committee explained that 'we have aimed at . . . a uniform law for all Hindus and not necessarily a uniform law for all forms of property. It may well be that in the interest of agriculture, special laws will in due course be enacted to secure the consolidation and prevent the fragmentation of agricultural holdings; and these may include a special law of succession, differing from the law applying to other forms of property.'[54]

Even Ambedkar was convinced enough by arguments about agricultural output and efficiency to ease up on his arguments about legal uniformity with respect to land. Fragmentation of agricultural land had been an issue that Ambedkar had taken up long before the formation of the Hindu Law Committee, in the immediate aftermath of the First

[51] 24 March 1943, *LAD*, pp. 1419–1420.

[52] These concerns preoccupied colonial officials throughout the first half of the twentieth century, see, for example, N. Charlesworth, 'The origins of fragmentation of landholdings in British India: a comparative examination', in P. Robb (ed.), *Rural India: land, power and society under British rule* (Delhi, 1992), pp. 181–215; and also Talbot, *Punjab and the Raj*, pp. 53–56; Baker, *An Indian Rural Economy*, pp. 154–164; E. Stokes, *The peasant and the Raj: studies in agrarian society and peasant rebellion in colonial India* (Cambridge, 1978), Chapter 11.

[53] 30 March 1943, *LAD*, p. 1618.

[54] *Report of the Hindu Law Committee, 1944–5* (1947), p. 10.

World War.[55] Whereas colonial administrators and some high-caste Indian reformers argued that land fragmentation and rural poverty were caused by Hindu property laws, he argued that these problems arose from an expanding rural population and low standards of living, issues that were political rather than religious and thus ones that the colonial government should address.[56] Now in government himself, Ambedkar was better placed to take the steps to improve rural life and access to land, but on the basis of his earlier diagnoses, he did not think that this project was necessarily bound up with reform of Hindu property law. He thus rejected critics' claims that the Code Bill fell short of its stated aim to centralise and clarify succession law because it did not apply to land.[57] 'I believe there is no necessity that a uniform law of inheritance should apply to all sorts of property', he told fellow legislators.

> Property varies in its nature, varies in its importance in the social life of the community and consequently it may be a matter of no mean advantage for society to have one set of laws of inheritance for agricultural property and another set for non-agricultural property. It may be that on a better consideration of the situation, Indian or Hindu society may come to the conclusion that land which is the foundation of its economic life had better be governed by the law of primogeniture so that neither the junior sons nor females may take part in its inheritance.[58]

Ambedkar therefore seemed to endorse the proposal in the NPC's land report to manage succession to agricultural land according to a system of inheritance other than religious personal law.

In 1950, the Government of Uttar Pradesh (formerly the United Provinces) passed a Zamindari Abolition Land Reforms Act, which closely followed the NPC's land report, including the suggestion relating to family-sized plots. The committee appointed to draft the Act reported that 'an agricultural family in our country has 2.2 workers on the average' and drew up its proposals on this basis.[59] The Act also established that succession to land would be governed by mechanisms outside personal law. Thus, Hindu landowners in UP were assured that, even if Ambedkar did successfully secure the passage of the Code Bill, their agricultural property would not be governed by its provisions. At the same time, the Act placed succession to UP agricultural land outside the purview of the

[55] B. R. Ambedkar, 'Small holdings in India and their remedies', *BAWS*, Vol. 1, pp. 455–479.
[56] Sturman, *The government of social life*, pp. 92–96.
[57] See comments by Mr Naziruddin Ahmad (West Bengal: Muslim), 9 April 1948, *CAI(L)D*, Vol. V, No. I, p. 3641 and S. B. M. Gupte (Bombay: General), 12 December 1949, *CAI(L)D*, Vol. VI, Part II, p. 503.
[58] 9 April 1948, *CAI(L)D*, Vol. V, No. I, p. 3651.
[59] 'Report of the United Provinces Zamindari Abolition Committee' (1948), Vol. I, p. 21.

complex Mitakshara coparcenary system, in which different family members could compete for control over an estate. In so doing it resolved legal questions about coparcenary members' liability for debts and mortgages run up by individual members against the joint family's landed property, an issue that had generated much debate even before the First World War.[60]

Over the next decade, many other state governments passed anti-zamindar legislation, though only some of these measures followed the UP Act in establishing entirely separate succession rights to land.[61] But even landholders in states where there existed no other legislation relating to land succession rights were protected from the Hindu Code's provisions. The Hindu Succession Act that was drafted following the post-election division of the Hindu Code left no room for confusion about inheritance rights in land. Section 4(2) of the Act stated: 'For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provision of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings.'

In this way, the questions of land reform and economic progress were successfully uncoupled from debates about women's rights and the Hindu Code Bill. The land reform Acts protected landowning men from the drive to create a more gender-equal Hindu succession law, but other aspects of the codification project, most notably the Hindu Marriage Act, still had the potential to disrupt agricultural production. A balanced divorce law that gave men and women equal rights to end their marriage could undermine men's control over women's unpaid domestic work and thus also the basic labour structures on which the land reform acts and plans to raise agricultural production were based. Agricultural growth, therefore, seemed to hinge on marriage reforms that did not give women too much freedom to leave their husbands.

[60] Washbrook, 'Law, state and agrarian society', pp. 694–695; Sturman, 'Property and attachments', pp. 611–637; E. Newbigin, 'The Hindu Code Bill and the making of the modern Indian state', Unpublished thesis, University of Cambridge, 2008, Chapter 1.

[61] S. Das, 'A critical evaluation of land reforms in India', in B. K. Sinha and Pushpendra (eds.), *Land reforms in India: an unfinished agenda* (New Delhi, 2000), pp. 30–32, 33–34. Land reforms passed in Punjab (and the states of Haryana and Himachal Pradesh that were created later), Jammu, Kashmir and Delhi all set out different orders of devolution for landed property. Rajasthan and Madhya Pradesh were the only states to operate tenancy laws that expressly applied personal law to land, though the courts in Rajasthan have been known to ignore women heirs' property claims in their application of these laws. B. Agarwal, *A field of one's own: gender and property rights in South Asia* (Cambridge, 1994), pp. 216–218.

By the early 1950s it was clear that the success of the new administration's economic policies, as well as the security of its electoral support base, required the development of a clear structure of Hindu law. The land reforms endorsed the nuclear, as opposed to the joint, family model as most compatible with 'modern' Hindus' social and economic needs, though a nuclear family that was firmly under the authority of the husband. Urban Hindu merchants and professionals had also endorsed the importance of the nuclear family, in conjunction with demands for stronger individual property rights, though they, too, had emphasised the dominance of husband-householders. Meanwhile, income tax policy and plans for economic investment were premised on a model of the HUF as a jointly owned, capital-generating estate. The interplay between these aspects of government policy and constituency interests did much to shape the resolution of the Code Bill debates after the 1951 election.

The Hindu Succession Act: creating a postcolonial joint family

The restructuring of the Code Bill's succession laws began in April 1950, following the conference held, at Nehru's behest, between Ambedkar and the Code Bill's staunchest critics. Newspapers reported that the majority of conference delegates agreed that, with many individuals seeking partition of their ancestral property, the coparcenary was no longer the lynchpin of Hindu society in the way it had once been. Even so, they called for Mitakshara joint property to be exempted from the Bill, arguing that the 'Mitakshara coparcenary has still a great hold on the masses, especially in rural areas, and therefore should be retained for the time being, allowing it to disappear in course of time'.[62] There was little support among delegates for a return to the rigid, patriarchal structure of coparcenary property as it had been interpreted in the Madras and UP courts. The law reforms of the 1930s had done much to enhance Hindu men's individual control over property which many representatives did not wish to give up. But the reforms proposed by Ambedkar and the Hindu Law Committee had shown how extending the principle of individual rights in Hindu law could undermine, rather than secure, the social and financial interests of those elite Hindu men in whose hands most wealth lay. The debate about the Code Bill's succession proposals, and later about the Hindu Succession Act, thus became the ground on which legislators and government officials sought to

[62] Conference findings reported in conjunction with later changes to the Code Bill in *Hindustan Times*, 19 November 1950.

negotiate a new system of Hindu family law, one that secured Hindu men's individual autonomy over their wealth, without sacrificing too far either Hindu patriarchy or the financial benefits with which the HUF had come to be associated.

The Code Bill was revised in the summer of 1950 to take on the suggestions that Ambedkar had received at the April conference. In addition to their demands regarding the Mitakshara coparcenary, conference delegates called for a return to the distribution of property as laid out in the Hindu Law Committee's original Code Bill.[63] This gave an unmarried daughter half the share of a son, and a married daughter a share one quarter the size. A number of delegates had argued that even this distribution would have a profoundly disruptive effect on family life because it would give the son-in-law power to intervene in his wife's family estate. To guard against this, they proposed a clause to ensure that sons were 'at liberty to buy off the share of their sister in the property compulsorily'.[64] The question of bringing agricultural land into the remit of the Bill was also raised in discussions,[65] prompting several delegates to call for a clause that explicitly barred female heirs from succession to either 'the family dwelling house' or 'agricultural properties'.[66]

The revised Code Bill also included clauses to exempt some, though not all, parts of matrilineal law from reform. Renuka Ray's call to 'save' the Marumakkatayam and Aliyasantan legal systems failed to win support from the majority of her fellow delegates.[67] Instead, this matter was referred to a specially convened conference of regional experts who met at Trivandrum, in the far south of the country, the following month. The Trivandrum conference proposed the introduction of 'saving clauses' to protect matrilineal practices of divorce and adoption but supported the application of other branches of the Hindu Code to Marumakkatayam and Aliyasantan law.[68] Women governed by Marumakkatayam and Aliyasantan law would be able to apply for a divorce more easily than those governed by the main body of the Hindu Code, but they lost the rights over family property that had traditionally come with this more flexible attitude to the conjugal bond.[69] Delegates at the main Code Bill

[63] *Hindustan Times*, 7 June 1950.
[64] Report of reforms introduced after the April conference, 'Proposed changes in Hindu Code Bill', *Hindustan Times*, 19 November 1950.
[65] *Hindustan Times*, 20 April 1950. [66] *Hindustan Times*, 7 June 1950.
[67] *Hindustan Times*, 19 November 1950. [68] *Times of India*, 15 August 1950.
[69] J. D. M. Derrett, 'The future of Malabar personal law within the framework of the projected Hindu Code Bill', *Kerala Law Times* (1952), pp. 9–20. These developments followed a broad reforming trend that had begun in the late nineteenth century, as male representatives from communities governed by matrilineal law had moved proposals that reformed their legal systems in ways that eroded women's property rights and heightened

meeting strongly supported the changes proposed by the Trivandrum committee.[70] Parts of matrilineal custom had been 'saved' from the Code Bill, though not in ways that protected women's property rights.

The 1950 version of the Code Bill produced a system of Hindu law that was much more in line with the economic policies of the postcolonial administration. In raising the position of the wife and daughter in the order of succession, it recognised and rewarded the 'emotional' bonds of the nuclear family, presenting the father/husband figure as a protective patriarch. At the same time, the 1950 Code also preserved the structure of the coparcenary, albeit as a more remote aspect of Hindu family life. In many ways, the revised Hindu Code Bill was an extension and clarification of the Hindu legal personhoods that had first been demarcated in the Hindu Gains of Learning Act 1931; Hindu men and women were first and foremost property-owning individuals who were primarily concerned with their own nuclear family. But Hindu men also held another, fictive legal persona as part of a HUF that was subject to separate taxation.

The results of the 1951/1952 general election created a legislative atmosphere that was more in tune with the views put forward at the April 1950 conference. When the Hindu Law Committee had collected evidence regarding the proposed Code Bill, a significant number of interviewees in the north Indian provinces of UP, Bihar and Punjab had argued that removing the coparcenary system could damage Hindu business interests. The Committee noted that 'some evidence was given before us at Lahore that businesses, particularly banking businesses, would be hampered, if not ruined, if the Dayabhaga replaced the Mitakshara'. The Committee, operating at this stage without D. N. Mitter, had rejected these fears, arguing that 'it is certainly not the case that businesses conducted by Muslims, Parsis or Englishmen have suffered from the fact that they do not have the Mitakshara joint family system'.[71] As Chapter 4 discussed, the move to universal franchise and redistribution of provincial power under the new constitution did much to enhance the political influence of north Indian legislators, many of whom had issued strong support for the Abducted Persons Restoration Act.

men's patriarchal authority over the family. G. Arunima, 'Multiple meanings: changing conceptions of matrilineal kinship in nineteenth- and twentieth-century Malabar', *Indian Economic and Social History Review*, 33, 3 (1996), pp. 283–307, and *There comes papa*; P. Kodoth, 'Courting legitimacy and delegitimising custom? Sexuality, sambandham and marriage reform in late nineteenth century Malabar', *Modern Asian Studies*, 35, 2 (2001), pp. 349–384.

[70] *Hindustan Times*, 19 November 1950. [71] Ibid.

The election also helped to give a sense of popular legitimacy to Nehru's Hindu law reform agenda, albeit in a rather indirect manner. As preparations for the election began, Prabhu Dutt, a *brahmachari*, or Hindu holy-man, announced his decision to run against Nehru in his own Allahabad constituency, opposing him solely on the grounds of his position on the Hindu Code.[72] Nehru did not meet with or engage seriously with Dutt, but the result of the *brahmachari*'s campaign was to suggest that support for the Hindu Code Bill was central to the Prime Minister's election platform. This state of affairs could not have been entirely disagreeable to Nehru as it allowed him to assume the image of a stalwart supporter of the Hindu Code without making decisive statements about his position on the measure. Nehru's private comments and correspondence at this time suggest that while he remained firmly in favour of *a* Hindu Code, his commitment to *the* Hindu Code Bill that had been previously introduced to parliament was somewhat less resolute than the *brahmachari* might have imagined. Following Ambedkar's resignation, the Law Ministry was entrusted to a Nehru loyalist, Dr K. N. Katju. After the close of the 1951 parliamentary session Nehru wrote to him to explain that he had by no means given up on the Hindu Code Bill, but that he blamed the failure to pass the Bill in the last session not only on the 'obstructionist tactics' of some of the members of the house but also on the 'wrong approach' taken by the government.

Any attempt to push through an enormous measure of this kind was bound to be frustrated. Normally it should take at least three months to get it through. No Parliament is ever going to have three months just for one such measure. It seems to me that the only proper course is for us to divide the bill up into a number of self-contained parts.[73]

In the final vote, Nehru retained strong control over his parliamentary seat, with a majority of 176,853. Of the three other candidates, only Dutt polled enough votes to save his deposit.[74] At the same time, the elections removed many of the legislators who may have been more committed to the social reform agenda associated with the Code Bill project. Acharya Kripalani and Ambedkar both lost their seats.[75] Politicians representing

72 *Bombay Chronicle*, 21 December 1951.

73 Note from Nehru to Katju, Minister for Law, 6 November 1951, *SWJN*, 2nd Series, Vol. 17, p. 189–190.

74 Though it must be added that Dutt only narrowly managed this, gaining sixty votes more than the number needed to save his deposit. *Bombay Chronicle*, 14 February 1952.

75 Struggling to come to terms with his defeat, Ambedkar accused the Congress party of sabotage. Ambedkar wrote to Kamalakant about a plot hatched by Dange and Savarkar to defeat him in the election on the basis of their opposition to his proposals to partition Kashmir. Letters from Ambedkar to Kamalakant, 14 and 18 January 1952,

parties to either side of the Congress's centrist position did not fare well either. S. P. Mookerjee's Bharatiya Jana Sangh, a right-wing Hindu nationalist party that he founded in October 1951 when he left the government, secured only three seats; the leftist lobby within the Congress had, by the time of the elections, already been much weakened by the clash between Purushottam Das Tandon and Kripalani in the Congress presidential elections of September 1950. The Kisan Mazdoor Praja Party (KMPP), which Kripalani formed with Congress dissidents from Andhra and West Bengal, won only nine out of the one hundred and forty-five seats it contested, with candidates forfeiting their deposit in seventy-four seats. Indeed, among the national parties, the left vote was split between the KMPP, the Communist Party of India, which won sixteen seats, and the Socialist party, which won twelve seats.[76]

The Congress's strong election performance set the stage for India's first Five Year Plan, which Nehru launched in early 1951, as well as the restructuring of the Hindu Code Bill into the Hindu Law Acts. The then Law Member, C. C. Biswas, introduced the Special and Hindu Marriage Bills to the Indian legislature in 1952, and the Hindu Minority and Guardianship Bill the following year. He also oversaw the introduction of the Hindu Succession Bill to the legislature in March 1955, but discussion of this measure was managed by Biswas's successor, H. V. Pataskar, who took over at the Law Ministry in April 1955. A lawyer-politician from Pune, Pataskar had criticised Ambedkar's attempted elimination of the coparcenary system as an attack on Hindu tradition and society.[77] On taking over the ministry, Pataskar was quick to tell the Lok Sabha that 'to a large extent this Bill is based on the … corresponding portion of the Hindu Code … but with one very important change, viz. that joint family property which is governed by the Mitakshara rule of survivorship is taken out of the purview of the Bill altogether'.[78] In fact, the Succession Bill followed closely the Code Bill as amended by delegates at the 1950 conference.[79] Widows and daughters were still granted a share of a man's individual property, with widows receiving a share equal to that of a son, but a daughter's share was now limited to half that of the other heirs. As Pataskar noted, the most significant feature of the Bill was the fact that it excluded the Mitakshara

Correspondence files, B. R. Ambedkar Papers. He appealed to the national electoral board against the results, but was unsuccessful. *Bombay Chronicle*, 18 October 1952.

76 'Statistical Report on General Elections, 1951 to the First Lok Sabha', Vol. I, pp. 41–42.

77 See discussion of Pataskar's response to Ambedkar's management of the Code Bill in the previous chapter.

78 5 May 1955, *LSD*, Vol. IV, Part II, Col. 8013.

79 22 March 1955, *Rajya Sabha Debates*, p. 2711.

coparcenary unit from reform, a move which served also to revive the complicated distinction in Hindu law between succession, the way in which property is passed from one person to another on the death of the holder, and survivorship or right by birth, the basis on which a son joined a coparcenary.

Aside from the Mitakshara coparcenary, no other Hindu system of joint family ownership was to be protected by the Bill. Property held in common by a family under Dayabhaga was to pass along the lines of succession set out in the Hindu Succession Bill, to daughters, widows and sons. So, too, was the joint family, or *taward*, property of the south Indian matrilineal systems. In families governed by Mitakshara law, the individually owned property of a Hindu man would be governed by the Succession Bill, but the joint family property would not. Just as the prohibited relationships of the Hindu Marriage Act had implied the 'true' Hindu-ness of north Indian practices, so the protection of the coparcenary, but not other joint family units, conveyed a notion that Mitakshara law was the most important and the most 'Hindu' of the various Hindu legal schools. Non-Mitakshara schools of law were seen as regional 'divergences' from a Hindu norm, rather than as more 'modern' or 'progressive' developments of Hindu law, which were the ways in which the Hindu Law Committee had earlier described Dayabhaga, and 'women-friendly' matrilineal systems.[80]

Pataskar was well aware that to include the coparcenary system in the Bill ran counter to the focus on gender equality that had first guided the Hindu Law Committee's Code Bill, acknowledging that:

> To retain the Mitakshara joint family and at the same time put the daughter on the same footing as a son with respect to the right by birth, right of survivorship and the right to claim partition at any time, will be to provide for a joint family unknown to the law and unworkable in practice.[81]

The main aim of the coparcenary system was to hold property within a family for several generations. The model of marriage set out in the Hindu and Special Marriage Acts established exogamous, patrilocal marital practices as the legal norm for Hindus, and all Indians. To give a married daughter a share in her father's family estate sat uncomfortably with the logic of coparcenary property. There was one way, however, that the Law Member could see to secure these two seemingly conflicting aims.

[80] Hindu Law Committee notes, Jayakar Papers, F.723, and *Report of the Hindu Law Committee*, *1944–45*, p. 36.
[81] 5 May 1955, *LSD*, Vol. IV, Part II, Col. 8014.

> If the joint family is therefore to be preserved and if the daughter's right to a share is to be recognised, it could only be done by giving the daughter a right by birth similar to that of a son or by giving the father a right to dispose of his coparcenary interests in the property by will or some such device.[82]

Neither the earlier Codes nor the original draft of the Hindu Succession Bill had provided for a Hindu man to will away his ancestral property. Indeed, in 1955 only select groups of Hindu men drawn from specific cities and regions of India possessed the rights to practise testamentary succession, and this only in relation to their individual rather than ancestral property.[83] Following Pataskar's suggestion, the Hindu Succession Bill was revised to include a new section, governing testamentary succession. Though the Mitakshara coparcenary was not governed by any of the other sections of the Succession Bill, the new clauses dealing with testamentary succession included a specific reference to coparcenary property, setting out that 'the interest of a male Hindu in a Mitakshara coparcenary property ... be deemed to be property capable of being disposed by him ... within the meaning of this section'.[84] This was a radical innovation of testamentary practices among Hindus and raised criticism from some legislators, who feared that, rather than helping female heirs, it would allow a father to disinherit his daughter by overriding some of the more egalitarian measures set out in the Succession Bill.[85] Calls for restrictions to be placed on the percentage of the family property that could be willed away, a practice adhered to by Muslims, failed to win the support of the majority of legislators, many of

[82] Ibid.

[83] The position of testamentary succession in Hindu law was the subject of much debate throughout colonial rule. In general, it was seen as an innovation, imported from English law, and recognised only by some courts in regions of direct British rule. Under the Hindu Wills Act of 1870, Hindu men governed by Dayabhaga law, from Bengal, Bihar and Orissa, could will away their entire estate, both self-acquired and family property; men governed by Mitakshara law in the Presidency Towns of Bombay and Madras could will away only their self-acquired property under the Act. The Oudh Estates Act of 1869 gave the same opportunity to taluqdars from that province. However, under the Indian Succession Act, passed in 1865 and according to which anyone marrying under the Special Marriage Act was governed, Hindus and other Indian subjects were expressly prohibited from making a will over their ancestral property. Hindus and Muslims who claimed the right under customary law to make an oral will could take out letters of administration on their personal estate under the Probate and Administration Act of 1881. In all cases, evidence of the will needed to be produced in court, and probate charges paid. Extract of the report of the Civil Justice Committee, 1925, NAI, Home Department, Judicial F.296-I-32/1925. See also Rankin, 'Hindu law to-day', pp. 8–10; Sturman, *Government of social life*, pp. 128–129.

[84] Cl. 30, Hindu Succession Act (Act XXX of 1956).

[85] See S. J. S. Bisht's amendment to Pataskar's amended clause, 30 November 1955, *LSD*, Vol. XI, Nos. 1–7, Col. 992.

whom clearly favoured this powerful extension of their individual property rights; an amendment to insert the clause 'Providing that no such disposition under this section shall be valid to the extent to which it deprives any daughter or son's wife of any property which would devolve on her but for such disposition' was defeated by nineteen votes to fourteen.[86] The amendment prompted Shri C. C. Shah, representing Gohilwad-Sorath in Saurashtra, Gujarat, to remark:

Don't distrust all fathers. That would be bad law; that would be a bad approach. We should not think that because the right of testamentary deposition is given to the father, forthwith every Hindu father will go and make a will depriving every daughter of her share in the property ... A Hindu father will never do it. To proceed on such a basis of distrust is to proceed on a wrong basis.[87]

In spite of these reassurances, debate about other clauses of the Bill did not suggest that the majority of legislators prioritised the financial interests of the daughter. Many continued to raise the familiar argument that to give a daughter a share in her father's property would disrupt the structure of the Mitakshara joint family by bringing a male outsider – the daughter's husband – into its midst. The view of 'true' Hindu marriage practices endorsed by the Hindu Marriage Act confirmed rather than undermined this claim. Thus, as one legislator argued with regard to the Succession Bill, 'a female heir generally gets married and goes to another family'.[88] Difficulties could therefore arise if she was eligible to inherit a share in immovable property, for example a house. There was no discussion of how this clause might operate in cases where a woman married a nearer relative, such as a maternal uncle.

Concerns about the fate of a family's dwelling house prompted the joint select committee that considered the Hindu Succession Bill in late 1955 to add a 'special provision respecting dwelling-houses', which prohibited a female heir from demanding partition of such jointly held property.[89] Pataskar issued strong support for this provision when the revised Succession Act was reintroduced to the legislature in May of the following year. Evoking the patrilocal marriage provisions of the Hindu Marriage Act as the norm for Hindu families, Pataskar maintained:

A dwelling-house of the family is a matter of great sentiment in our country. Besides, in the rural conditions obtaining in our country, it is the prime family necessity. A daughter generally passes by marriage into another family and has

[86] Ibid, Col. 1002. [87] 3 May 1956, *LSD*, Vol. IV, Part II, Col. 7179.
[88] Shri Syamnandan Sahaya, representing Muzaffarpur Central in Bihar, 8 May 1956, *LSD*, Vol. IV, Part II, Col. 7537.
[89] Cl. 23 Hindu Succession Act, 1956.

to stay normally in her husband's family house. She is also likely to act under the influence of her husband.[90]

Explaining the logic behind the select committee's decision to include this clause, the Law Minister insisted, 'It is not a question of making a distinction between sex and sex or male and female' but reflected the committee's concern for the plight of 'ordinary' Hindu families. During the joint select committee's considerations it had been argued that while 'dwelling-houses' varied enormously in size, 'in the majority of cases' small dwelling-houses 'were owned by lakhs and lakhs of people'. Should a daughter, who lived outside this house, be granted the right to claim partition of the family property, it would be large families with small homes that would suffer most. Unable to legislate according to the size of the home, the committee decided to add the clause thinking 'that it was better that at least on account of someone who had gone out of the family, there should not be any disturbance in the [living] arrangement' of other family members. The clause, Pataskar explained, was not designed to restrict women's property rights but was simply a 'realisation of the existing state of things'.[91]

Members of the Rajya Sabha added a further amendment to the 'dwelling-houses' clause which stipulated that only a daughter, and not any other female heir, had a right of residence in her father's 'dwelling-house', and then 'only if she is unmarried or has been deserted by or has separated from her husband or is a widow'.[92] Legislators such as Renu Chakravarti and Pandit K. C. Sharma argued that the amendment clearly disadvantaged women and was *ultra vires* of the state's commitment in the Fundamental Rights to avoid gender discrimination.[93] The majority of the legislature disagreed, however, and supported Pataskar's argument that the provisions were practical rather than gender biased. Legislators' concern to prevent the fragmentation of family wealth seemed very much in keeping with the government's wider economic programme to nurture Indian investment and promote economic growth. Thus, in terms of a daughter's access to her family home, the debate about property rights moved from a discussion of gender equality to one that emphasised the 'financial security' of the male-dominated family estate.

Similar arguments and attitudes shaped the final wording of the provisions regarding coparcenary property. As the Lok Sabha began its clause-by-clause consideration of the Bill, Pataskar moved an amendment

[90] Pataskar, quoted by Shri Dabhi, 8 May 1956, *LSD*, Vol. IV, Part II, Cols. 7539–7540.
[91] 8 May 1956, *LSD*, Vol. IV, Part II, Cols. 7564–7565.
[92] Cl. 23 Hindu Succession Act, 1956.
[93] 8 May 1956, *LSD*, Vol. IV, Part II, Col. 7548 and Cols. 7550–7551.

to allow that 'if the deceased had left surviving him a female specified in class I of the schedule [the closest heirs, the son, daughter, widow, mother and grandchildren up to two generations] ... the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession as the case may be, under this Act and not by survivorship'. Pataskar argued that the amendment would preserve the coparcenary in families with only male children but dissolve it in those with a daughter.[94] In practice, however, this clause had more complex implications for women's access to property within the family.

The clause dissolved the distinction between coparcenary and individual property in relation to the deceased's own estate but it did not dissolve the coparcenary estate to which he belonged. A dead man's surviving coparceners continued to hold ancestral property away from the influence of the dead man's female relations. Thus, if a father died, leaving two sons and a daughter, his share in the coparcenary would be divided, along with his individually acquired property, among his wife and three children. The widow and sons would each receive equal shares of this accumulated property, while the daughter would be given half this. Yet in addition to this property, the sons would continue to hold shares in the coparcenary to which their father had belonged and from which their mother and sister continued to be excluded.[95]

A number of legislators questioned how far the amendment helped women's access to resources within the family. Renu Chakravarti, a representative of West Bengal and vocal critic of key aspects of the Succession Bill, lamented the unwillingness of the government to 'go as far as ending the Mitakshara system' and argued that, together with the expansion of testamentary laws under the Bill, the provisions of the amendment did little to protect the daughter's rights.[96] Shrimati Sushama Sen, representing the Bihari constituency of Bhagalpur South, 'congratulate[d]' Pataskar on the amendment but argued that the revised Bill still granted women far less than the original Code, drafted by Rau's Hindu Law Committee, had intended.[97] To the majority of legislators, however, Pataskar's amendment seemed to provide the perfect balance between maintaining the coparcenary system and protecting women's rights. The Succession Bill won strong support in both the lower and upper house of the central Indian legislature and was given presidential assent on 17 June 1956.

[94] 3 May 1956, *LSD*, Vol. IV, Part II, Cols. 7225–7226.
[95] For a fuller discussion of this point and its repercussions see L. Carroll, 'Daughter's rights of inheritance in India: a perspective on the problem of dowry', *Modern Asian Studies*, 25, 4 (1991), pp. 798–801.
[96] 3 May 1956, *LSD*, Vol. IV, Part II, Col. 7163.
[97] Ibid, Cols. 7145–7146.

Made during the final stages of parliament's consideration of the Succession Bill, the decision to give female heirs access to a dead man's coparcenary property allowed the government to stress its commitment to improving women's rights, even if, in practice, the Succession Act did little to challenge male control over the family estate. It is important to note, however, that although it denied women equal property rights, the system of inheritance set out in the Hindu Succession Act was not the same as the coparcenary system, or even the succession practices, that had operated hitherto. All women now enjoyed absolute, rather than limited, control over their estate (although clause 14(2) of the Act stipulated that this rule did not affect property inherited by testamentary succession, in which case a man could stipulate that female heirs inherit property for their lifetime only). The Act also gave a widow a share equal to that of her son in both the self-acquired and coparcenary property of her husband. The rights of Hindu daughters were also improved by the Act, except for those governed by Mayukha Hindu law in Bombay, who had already enjoyed some access to their father's property.

The Hindu Succession Act also radically altered the property rights of Hindu men. The right to make a will, which previously had been enjoyed by only select groups of Hindu men, was now extended to all Hindus and opened up to cover coparcenary as well as self-acquired property. Anyone making a will had to follow the laws of probate, but the testamentary provisions of the Hindu Succession Act effectively granted Hindu men the possibility of complete, individual control over the devolution of their entire estate. Testamentary rights also provided a means to undermine any of the provisions in the Act designed to improve women's access to property.

The Succession Act's provisions also made it harder for women to avail themselves of the divorce rights granted to them under the Hindu Marriage Act. The Hindu Marriage Act had stipulated that no one other than the husband and wife could initiate divorce proceedings. The Hindu Succession Act limited a married woman's access to the resources of her natal family, making her more financially dependent on her husband. At the same time, reinforcing the Hindu identity and social 'propriety' of the virilocal marital practices set out in the Hindu Marriage Act, the Succession Act emotionally and geographically distanced a married woman from her natal family by placing restrictions on her ability to return there after marriage. In a number of different ways, therefore, the Hindu Succession Act made it harder for a married woman to access the financial resources she would need to file a case for divorce if she wished to leave her husband. Far from being a watered-down version of the earlier Code Bill, or even a symbol of

social progress towards which India could move in the future, the Hindu Succession Act introduced a radical new model of Hindu family life, one that was compatible with the economic aspirations of the new Indian nation-state.

Conclusion

The Hindu Succession Act laid the foundations of a new Indian property regime, which itself reflected a postcolonial shift in the administration's attitude to political economy. Its provisions secured the legal basis of the HUF's all-male collective structure, and thus also the HUF's important tax advantages, at the same time as giving Hindu men greater individual autonomy over their estate, allowing them to release capital more easily and, it was hoped, invest it in the national economy. The Hindu Succession Act marked out the coparcenary as wholly distinct from the wider structure of the Hindu family. The former was purely a legal, property-owning construction, governed by Mitakshara law and comprising male relatives only; the second was a structure that rested on bonds of love and affect. The Act did not offer a clear or explicit definition of the HUF (as opposed to the Hindu joint family estate), but it did establish a watertight legal argument to explain why some groups of citizens could be taxed, and given special dispensation, as a collective rather than individuals.

The Hindu Law Acts also ushered in a postcolonial system of Hindu law. The Act replaced a regionally divergent system of Hindu law with a singular *Indian* Hindu legal system, albeit one that recognised certain regional and customary practices.[98] But, together with the Hindu Marriage Act, this consolidated system of Hindu property law served also to impose new differences and hierarchies between different groups of Hindus. The first chapter of this book looked at how colonial theories about the evolution of different schools of Hindu law established a hierarchy of social progress among regional Hindu communities, with Bengalis claiming to be more socially developed because property rights under Dayabhaga law had more in common with the individual property rights of modern western liberal law. The Hindu Law Acts, and the Hindu Succession Act above all, fundamentally reconstituted this view of the Indian legal system. In specifically protecting the coparcenary, the

[98] Majumdar, *Marriage and modernity*, p. 208; R. V. Williams, 'Hindu law as personal law: state and identity in the Hindu Code Bill debates, 1952–1956', in T. Lubin, D. R. Davis and J. K. Krishnan (eds.), *Hinduism and law: an introduction* (Cambridge, 2010), pp. 105–119.

Hindu Succession Act established the Mitakshara school as the default, principal system of Hindu law, presenting other schools as lesser, regional variations.

A series of legal decisions in the 1960s affirmed this new legal hierarchy. In March 1965, justices of the Calcutta High Court held that, because he was governed by Dayabhaga law, J. K. Rudra's estate, which passed to his wife and his son on his death, did not constitute coparcenary property and that, as a result, Srimati Bani Rani Rudra and her son had to pay tax on the annual income from this property as individuals, not as a single joint family.[99] This ruling provided the precedent in another case, heard by the Calcutta bench two years later, which ruled that the family of Prafulla Chandra Bhar could not be assessed for wealth tax (a charge brought in under the Indian Wealth Tax Act of 1957) as a HUF because they did not constitute a Mitakshara coparcenary.[100] These rulings were no doubt welcomed by the appellants, as they allowed for the breakdown of an estate eligible for a high rate of tax into shares that were eligible for lower tax levels. But in using the law courts in this way, the Rudra and Bhar families also confirmed their legal status as representatives of a marginal group within the 'Hindu community' constructed by the Hindu Code Bill. The Hindu Succession Act therefore established the Mitakshara-governed family as the basis not only for 'modern' Hindu law but for an *Indian* legal system, applicable to Hindus throughout the country with only a few, regional exceptions. Indeed, the Act, along with accompanying economic reforms, reversed colonial views of the joint family as a primitive legal structure that hindered financial development, presenting it instead as an important and celebrated building block for a national, rather than imperial, Indian economy.

[99] Commissioner of Income-Tax v. Sm. Basi Bani Rani Rudra, [1967] AIR Cal 293.
[100] Commissioner of Wealth-Tax v. Gouri Shankar Bhar, [1968] 68 ITR 345 Cal.

Conclusion: modern democracy, secularism and the Hindu family in postcolonial India

In September 2005 the Indian Parliament passed the Hindu Succession (Amendment) Act, Act 39 of 2005. Perhaps the most significant aspect of the new Act was its reform of section 6 of the 1955 Hindu Succession Act. The 2005 Act granted daughters governed by Mitakshara law a birthright in their natal family coparcenary. This gave them full membership of the coparcenary and the same rights to its property as a Hindu son enjoyed. The 2005 Act also deleted section 4(2) of the original Hindu Succession Act, which expressly prevented its application to agricultural land – though this change affected only those states that had not passed separate succession laws for landholdings. Finally, the 2005 Act also removed section 23 of the 1955 Hindu Succession Act, the clause dealing with a woman's access to her family's 'dwelling house'. Daughters and sons now had exactly the same claims to and authority over their natal family home.

Some academics and scholars welcomed the Amendment Act, celebrating it as a breakthrough for women's rights. Writing in *The Hindu Magazine*, Bina Agarwal, a Professor of Economics at the Institute of Economic Growth in Delhi and one of the leading writers on women's property rights in South Asia, heralded the new Act as a 'landmark step towards gender equality'.[1] Agarwal praised the deletion of section 4(2) of the Hindu Succession Act in particular, arguing that this move had the potential to help the large number of women living in rural India gain greater power within their families, and within society at large.[2]

The Indian legislators who passed the amendment were certainly keen to promote it as an important step towards improving women's rights and gender equality. Though it was passed by the United Progressive Alliance government, which came into office in 2004, work on the

[1] B. Agarwal, 'Landmark step towards gender equality', *The Hindu Magazine* (Sunday 25 September 2005).

[2] Agarwal, 'Women's inheritance: the next steps', *Indian Express* (Monday 17 October 2005).

amendment had begun four years earlier when the Bharatiya Janata Party was in power. Published in May 2000, the Law Commission of India's 174th report drew attention to the 'deep and systematic' discrimination against women in Hindu property law that clearly contravened constitutional promises to uphold gender equality.[3] The Commission made recommendations and submitted proposals to remedy the legal inconsistencies identified, on which much of the later 2005 Hindu Succession (Amendment) Act was based. Introducing the Act in the Lok Sabha on 29 August 2005, the then Minister of Law and Justice, H. R. Bhardwarj, explained that, as far as the government was concerned, the main aim of the measure was to improve women's rights:

> The National Common Minimum Programme of our Government, among other things, seeks to give complete legal equality for women in all spheres, a practical reality, especially by removing discriminative legislation and by enacting a new legislation that gives equal rights of ownership of assets like house and land. The Bill is a part of our endeavour in this direction.[4]

This attitude sparked considerable anger among some women's rights activists. While many agreed that the amendment removed some of the gender inequalities imposed by the Hindu Succession Act, they asked why parliament was willing to focus on reforming the property rights of Hindu women only. The government had cited 'the guarantee of equality for women in Article 14 and 15 [of the Constitution] as a justification for the amendments', Indira Jaising, a senior advocate of the Supreme Court of India, argued, but 'are these guarantees available only to Hindu women? ... Reform must be sought ... that will benefit all women.'[5] Activists feared that the 2005 amendment could further entrench a dichotomous view of Hindu and Muslim personal law that had been strongly articulated in the wake of the Shah Bano case and the Muslim Women (Protection of Rights on Divorce) Act, a view that saw Hindu law as a system that governed people who accepted women's claims for equality, and Muslim law as a backward, unchanging and chauvinistic legal system, governing people who were willing to tolerate gender prejudice.

As well as the exclusive focus on Hindu law, what is notable about the 2005 amendment is that it sought to tackle gender inequality by including daughters within the coparcenary and not by simply abolishing this structure. The question of abolishing the coparcenary was raised and

[3] Law Commission of India, 'Report on property rights of women: proposed reforms under Hindu law' (May 2000), Chapter I. www.lawcommissionofindia.nic.in/kerala.htm [accessed 21 August 2011].
[4] *LSD*, 29 August 2005, http://indiankanoon.org/doc/842089/ [accessed 21 August 2011].
[5] I. Jaising, 'Unequal reform', *Communalism Combat* (January 2005), p. 32.

much discussed by the Law Commission in its report, which looked both at the historical development of the Hindu Succession Act and at the way in which it had operated since 1956. The report noted that five southern states – Andhra Pradesh, Tamil Nadu, Maharashtra, Karnataka and Kerala – had already taken steps to address the gender bias of coparcenary laws. Of these states, the first four had already passed legislation to give daughters full membership of the coparcenary. Kerala had taken a different approach, abolishing the coparcenary altogether. The Kerala Joint Family System (Abolition) Act (Act 30 of 1976) established that any Hindu born in the state after 1 December 1976 was not able 'to claim any interest in any property of an ancestor during his or her lifetime [if this claim was] founded on the mere fact that the claimant was born in the family of the ancestor'. Even more significantly, all existing coparcenaries were also abolished on this date and replaced with tenancy in common – the basis on which ancestral property was held under Dayabhaga law.[6] In addition to its own investigations, the Law Commission also approached members of the public, asking for their views on the operation of the Hindu Succession Act and the system of coparcenary property. Whereas the Hindu Law Committee had interviewed several hundred individuals, the Commission received only sixty-seven replies to its questionnaire. Of this small sample size, forty-nine respondents opposed the retention of the coparcenary system, seventeen favoured keeping it and one refused to comment.[7]

In spite of these results, when they came to consider their own proposals, members of the Commission decided against abolition of the coparcenary, along the lines of the Keralan Act.

As a first reaction the Law Commission was inclined to recommend the adoption of the Kerala Model *in toto* as it had abolished the right by birth of males in the Mitakshara coparcenary and brought an end to the Joint Hindu Family. This appeared to be fair to women as they did not have any right by birth; but on further examination it became clear that if the joint Hindu family is abolished as on date and there are only male coparceners, then only they would hold as tenants in common and women would not get anything more than what they are already entitled to by inheritance under section 6 of HSA. So the Commission is of the view that it would be better to first make daughters coparceners like sons so that they would be entitled to and get their shares on partition or on the death of the male coparcener and hold thereafter as tenants in common. We recommend accordingly.[8]

[6] Sections (3) and (4), Kerala Joint Family System (Abolition) Act 1975 (Act 30 of 1976).
[7] Law Commission of India, 'Report on property rights of women: proposed reforms under Hindu law' (May 2000), Annexure II.
[8] Law Commission of India, 'Report on property rights of women: proposed reforms under Hindu law' (May 2000), Chapter V.

Thus, even as it removed one of the key forms of legal discrimination against Hindu women, the Hindu Succession (Amendment) Act of 2005 reinforced the legal and social importance of the Mitakshara coparcenary. Its passage helps to highlight the logic underpinning the framework of liberal rights, discussed in the introduction to this book, in which achieving the human equality or sameness at the heart of the rights discourse requires the simultaneous recognition and categorisation of human difference. The Act removed one set of differences, those that separate Hindu male and female relations in the Mitakshara-governed family, to enfold Hindu women as 'equal' to male property holders, making it possible to think of a 'Hindu property holder' as an abstract, ungendered individual. But this equality was achieved through a process that affirmed the difference between Hindu and non-Hindu property holders as well as between Hindus who are part of a Mitakshara coparcenary and those who are governed by variants of the 'mainstream' Hindu legal system.

The amendment of the Hindu Succession Act shows how the 'equalising' logic of liberal rights depends on processes of social abstraction, through defining people as legal subjects, that both lead to the exclusion of particular groups and allow those who are excluded to contest their marginalisation: the 2005 Act used the framework of rights to recognise the legal equality of Mitakshara-governed women, a group which had been marginalised by the same rights framework in 1956. The liberal rights framework is thus both restrictive and enabling, for different groups and individuals at different points in time. An important task for the historian, then, is to understand why and how certain rights claims are accepted and become established at certain historical moments. Functionalist arguments that link rights and class-consciousness to economic structures have proved unsatisfactory in this regard, leading to counterfactual arguments about the failure of certain groups to behave in the way that they should rather than explaining why events developed as they did. But studies that privilege intellectual arguments or discourse to the exclusion of material context are also limited.

This book has argued that changes in legal rights and in which social groups are recognised as modern 'subjects' are driven not only by intellectual arguments, or discourse, but by the interplay of such arguments with contemporary economic structures. The development of the Hindu Succession (Amendment) Act again provides a useful example of this. The Law Commission's deliberations show that the Hindu Succession Act of 1956 had created a network of property rights within which more abstract ideals of equality had to be mediated. Though Commission members believed that the coparcenary system was not the best way to

secure gender equality in principle, their proposal to retain it in the revised Hindu Succession Act was based on their understanding of the way in which its abolition would affect existing property relations.

Locating rights claims within their socio-economic context in this way allows us to recognise the formative role of 'universalising' rights discourse without confusing these universal claims with a blueprint for historical development.[9] At the same time, rejecting the liberal rights discourse as the basis of historical analysis does not require us to reject either the principle of social equality (even as we realise the limitations of the liberal framework to secure this end) or the politics of transformation. Historically located studies of rights claims allow us to identify and historicise the broader, global processes that drive social change and challenge existing power relations in modern liberal societies, rather than reifying them into autonomous forces beyond our influence.

This book has argued that the Hindu Code Bill should be regarded as the legislative cornerstone of a new Indian property regime that developed in line with the financial pressures of 'democratisation' – that is, the emergence of a particular configuration of representative government in the first half of the twentieth century. While the provisions of the Code Bill, and its focus on Hindu law, were particular to the Indian context, many of the forces that shaped the Code were not. For example, in the United States, the financial demands of the First World War prompted the government to reconsider progressive models of taxation in a manner that was not dissimilar to its counterpart in India. The US Revenue Acts of 1916 and 1918 drastically restructured the federal income tax system to introduce graduated rates. By the end of the war federal income tax had been transformed into 'the foremost instrument of federal taxation'.[10] After the war, the federal Treasury's efforts to hone its new source of revenue and to minimise tax evasion generated much legal debate about the relationship between family law and income tax policy. Variations in the family law regimes followed by different states allowed citizens to challenge government policy and block attempts to tax income at the highest rate possible. The ensuing debates generated a considerable body of legal decisions that sought to establish more uniform readings of state family law and provide clearer definitions of the

[9] D. Chakrabarty, *Provincialising Europe: postcolonial thought and historical difference* (Princeton, 2000).

[10] W. E. Brownlee, 'Economists and the formation of the modern tax system in the United States: the World War I crisis', in M. O. Furner and B. Supple (eds.), *The state and economic knowledge: the American and British experiences* (Cambridge, 1990), p. 407, fn. 6.

line between personal and marital property.[11] Just as in India, the emergence of a more powerful, interventionist US state necessitated the legal restructuring of access to resources within the family.[12]

What was distinct about the emergence of a new form of economic citizenship in India was the way in which colonial readings of Hindu law understood the Hindu family to hold property as a single collective. In other countries, and in terms of non-Hindu communities in India, closer monitoring of taxpayers' income generally led government administrations to define citizens in terms of individual economic actors, a view that disregarded religious identity or, rather, isolated it to a private sphere that was not important to this 'public' persona. But not the HUF. Tax officials could not ignore or 'privatise' Hindu law if they wished to tax the Hindu family as a single unit. To maintain high levels of state revenue, Indian tax officials had to uphold not only the structures of Hindu law but also its specifically religious character, as it was this, they argued, that prevented the state from adopting a policy of individual taxation. Notions of joint property existed in other legal systems. To return to our US example, there was, in the early twentieth century, some ambiguity about whether marital property was held by a single entity (the husband) or by the couple as two partners. But US civil law could be altered by statute. When Hindu legislators called on the colonial administration to recognise individual rights in the HUF, they were told that the administration could not do so because it would undermine religious custom, an area of life in which, under the terms of its 'secular' policy of religious neutrality, it did not have the legal authority to intervene. Far from marking a failure of secular democracy in India, or the anomalous nature of its operation, the passage of the Hindu Code Bill and the retention of religious personal law reflect the liberal, modern character of the postcolonial Indian state.

This does not mean, however, that Indian democracy would collapse if the Government of India did abolish personal law. The legal reforms in Kerala demonstrate clearly that state governance and political representation can continue to function in India, even if the HUF is abolished. But the historic relationship between the HUF and democratic

[11] D. J. Ventry, Jr., 'Saving Seaborn: ownership not marriage as the basis of family taxation', *Indiana Law Journal*, 86, 4 (Fall, 2011), pp. 1459–1526.

[12] There are also striking parallels between the history of the Hindu Code Bill and the transformation of taxation policy in pre- and early Soviet Russia, see Kotsonis, '"Face-to-Face": the state, the individual and the citizen in Russian taxation 1863–1917', *Slavic Review*, 63, 2 (Summer 2004), pp. 221–246 and '"No place to go": taxation and state transformation in late imperial and early Soviet Russia', *The Journal of Modern History*, 76, 3 (September 2004), pp. 531–577.

government does little to encourage Indian legislators to establish a uniform civil code in place of personal law. To adopt a uniform civil code would not only affect people's personal relations, it would also disturb the complex networks through which different aspects of Indian economic production operate and intersect.

If the structure of the modern state's political economy discourages legislators from abolishing Hindu law, they face little pressure from wealthy Hindu constituents to do so either. Reforms such as the 2005 amendment to the Hindu Succession Act only reinforce this situation. The amendment has now given Hindu women in propertied families an incentive to accept the reading of Hindu law upheld by the state. Women's groups have been one of the few sections of Indian society to campaign consistently for the introduction of a uniform civil code since independence, arguing that such a code is vital to improve the rights and social status of all Indian women. The 2005 amendment has complicated this argument by removing the legal discriminations that may have helped women's organisations to galvanise support for the civil code among Hindu women, without doing the same for women from Muslim, Christian or other non-Hindu communities.

This book has attempted to highlight the factors that have held personal law in place, not to discourage or undermine the campaign for civil law reform in contemporary India, but in the hope that more accurate identification of these influences will enable a more effective struggle against them. Those who fight for social equality must not assume that the structures of democratic government are inevitably geared towards their demands. The fiscal demands of modern economic democracy mean that administrations premised on this logic are often more than willing to acknowledge the rights of all citizens, but these same demands mean that these administrations engage most actively with and uphold the rights of those citizens who hold property, as the operation of the Hindu Marriage Act, discussed in Chapter 5, demonstrates. The Indian legal system undermines social equality not because it undermines or is incompatible with democratic 'principles' but precisely because of the manner in which it underpins and supports the structures of representative democracy in India. As a result, those who seek social equality in India, and in all 'modern' democracies, must challenge and question the structures of representative politics rather than assume that such structures are the means through which to secure the ends they desire.

At the same time, it is important to remember that liberal legal systems and legislative measures, such as the Hindu Code Bill, are premised on a particular form of subjecthood and do not necessarily

reflect everyday lived relationships. Indeed, as Srimati Basu has shown, the provisions of the Hindu Succession Act appear to have had little impact on women's access to resources within many families living in contemporary Delhi.[13] This book has traced the emergence and nationalisation of the legal framework through which Hindu women's rights are now negotiated in India, but there remains much need for further investigation of how this framework has affected Indian family life since it has been passed. Closer study of the case law generated by the Hindu Law Acts would help us to gain a much fuller picture of the 'life' of the Hindu codification project.[14] Looking in particular at the regional differences or indeed growing regional conformity in individual instances of case law should be one important part of such work. How far has the singular model of Hindu socio-economic life presented in the Law Acts been taken up across the subcontinent? Although the all-India viewpoint taken up by this book reflects the nature and scope of the Code Bill project itself, it is not in anyway suggested that such a perspective is the only or even the best way to look at the intersections between law, economy and gender that it has mapped. Much work is still needed to improve our understanding of the many structures – both material and intellectual – that shape social interactions and inequalities in modern societies. If this book has shed light on possible new avenues that such research could take, in India and other contexts, it will have served its purpose.

[13] S. Basu, *She comes to take her rights: Indian women, property and propriety* (Albany, 1999).
[14] Rohit De provides an excellent discussion of the difficult but necessary task of reading the 'life' of law and legislation, 'Mumtaz Bibi's broken heart'.

Appendix Law Members involved with the Hindu Code Bill

1941–1943 Sir Syed Sultan Ahmed

Born on 24 December 1880 in Bihar, Sir Syed Sultan Ahmed was called to the Bar in 1905, and appointed Deputy Legal Remembrancer of the Government in Bihar and Orissa in 1913. He acted as a Government Advocate between 1916 and 1937, with a stint as a judge in Patna High Court from 1919 to 1920. He was Vice Chancellor of Patna University from 1923 to 1930, and was a member of the Hartog Education Committee 1928–1929. He was also a member of the Round Table Conferences 1930–1931. He served as an acting member of the Executive Council of Governor of Bihar and Orissa in 1932. He became the acting member of the Governor-General's Executive, in charge of Railways and Commerce, in 1937 before becoming Law Member in July 1941.

1943–1946 Sir Asoka Kumar Roy

Born on 9 September 1886 in Bengal, Sir Asoka Kumar Roy served twice as a judge of the Calcutta High Court. He held the post of Advocate General of Bengal between 1934 and 1943, when he became Law Member.

1946–1947 Mr Jogendra Nath Mandal

A Bengali Dalit leader with links to the Muslim League, Jogendra Nath Mandal was appointed by Jinnah to the post of Legislative Member in the interim government on 25 October 1946.[1]

15 August 1947–October 1951 B. R. Ambedkar

Born in April 1891 in Mhow, central India. Ambedkar's health deteriorated following his resignation as Law Member in 1951 and his defeat in the elections the following year. He converted to Buddhism, along with many of his followers, at a mass conversion ceremony held in Nagpur in October 1956 and died only weeks later in his sleep on 5–6 December.

[1] Jinnah to Wavell, New Delhi, 25 October 1946, document 513, N. Mansergh (ed.), *The Transfer of Power, 1942–47*, Vol. VIII (London, 1979), pp. 806–807.

October 1951–March 1952 Dr Kailas Nath Katju

Born on 17 June 1887 in Jaora, then a Princely State, now in Madhya Pradesh. He joined the Allahabad High Court Bar in 1914. He was a member of the Council of United Provinces Provincial Congress Committee for several years and was elected as Chairman Allahabad Municipal Board between 1935 and 1937. During this time he also served as Minister for Justice, Industries and Development in the Government of the United Provinces, resigning his seat in 1939. He became a member of the All-India Congress Committee on 16 February 1940. He was sentenced in November 1940 in connection with the Civil Disobedience Movement to serve 18 months; he was released on 19 November 1941.

March 1952–April 1955 C. C. Biswas

Charu Chandra Biswas was a former High Court judge from Bengal and Minister for Minority Affairs before the election. When he took office he was described by the *Bombay Chronicle* as 'something of an unknown entity'.[2] A not entirely uncontroversial figure in the law courts during British rule, he was not seen as an arch conservative but, certainly in comparison with Ambedkar, was no radical. Biswas was the only Indian judge on the High Court bench during the infamous legal case involving the identity of the Kumar Bhawal in the early twentieth century. He eventually ruled in favour of the alleged Kumar over the Court of Wards, giving the prince control over the landed estate that had been repossessed by the colonial administration.[3]

April 1955–May 1957 H. V. Pataskar

Born in Indapur, Pune. Following the passage of the Hindu Code Bills, Pataskar went on to become governor of Madhya Pradesh from June 1957 until February 1965.

[2] *Bombay Chronicle*, 14 May 1952, Vol. XL, No. 115.
[3] P. Chatterjee, *A Princely Impostor? The Kumar of Bhawal and the Secret History of Indian Nationalism* (Delhi, 2004).

Bibliography

Primary sources

Official records

Proceedings of the Government of India, India Office Records, London
- Public and Judicial Department
- Economic Department
- Indian newspaper reports (Bengal, Bombay, Madras, Punjab, United Provinces)

Proceedings of the Government of India, National Archives, Delhi
- Home Department Judicial Branch Files
- Home Department Public Branch Files
- Finance Department Separate Revenue Branch Files
- Central Board of Revenue Files

Private papers

B. R. Ambedkar (National Archives of India – NAI)
N. C. Chatterjee (Nehru Memorial Museum and Library – NMML)
M. R. Jayakar (NAI)
R. Prasad (NAI)
S. P. Mookerjee (NMML)
B. S. Moonje (NMML)
B. N. Rau (NMML)

Papers of organisations

All-India Congress Committee Papers (NMML)
All-India Women's Conference Papers (NMML)
All-India Hindu Mahasabha Papers (NMML)

Official and semi-official publications

An income tax manual, being Act II of 1886, with the rulings and orders issued by the Government of India and the Government of Bombay (Bombay, 1912)

W. H. Grimley, *An income tax manual: being Act II of 1886, with notes* (Calcutta, Thacker, Spink & Co., 1886)

Hindu Law Committee Report (Delhi, 1941)

Hindu Law Committee Report 1944–5 (Delhi, 1947) in M. R. Jayakar Papers F.723 (NAI)

Income Tax Enquiry Report, 1936 (New Delhi, 1937)

Income-tax Manual, issued by authority of the central government (eighth edition) corrected up to 1st July 1939 (Delhi, 1939)

Report of the Indian Statutory Commission, three volumes (London, 1930)

Report of the Indian Taxation Enquiry Committee (Madras, 1924–1925)

Report of the United Provinces Zamindari Abolition Committee, two volumes (Allahabad, 1948)

United Provinces income tax manual. [With the text of the Income-tax Act, 1886, as amended to April 1, 1903.] (Allahabad, Government of United Provinces, 1911)

Written Statements submitted to the Hindu Law Committee, two volumes (Delhi, 1947)

Parliamentary debates

Constituent Assembly (Legislative)
Council of State debates
Legislative Assembly debates
Lok Sabha debates
Rajya Sabha debates

Journals and newspapers

Bombay Chronicle
Hindustan Times
Organiser
Indian Social Reformer
Times of India
The Mail
The Hindu Magazine
Indian Express
Communalism Combat

Law series and journals

All India Reports (Allahabad, Bombay, Calcutta and Madras Series)
Income Tax Reports
Indian Law Report, Calcutta Series
Madras Law Journal
The Law Reports: Indian Appeals

Other published primary sources

Ambedkar, B. R., *The rise and fall of Hindu woman* (Jalandhar: Bheem Patrika Publications, 1950, 4th edn 1988)

Selected speeches of Dr. Baba Saheb B. R. Ambedkar, compiled by B. Das (Sullundur City: Bheem Patrika Publications, 1963)

Dr. Babasaheb Ambedkar: writing and speeches, V. Moon (ed.), 8 vols. (Bombay: Government of Maharashtra Education Department, 1982–2003), Vols. 1, 2, 6, 12.

Bowley, A. L. and Sir J. Stamp, *The national income 1924: a comparative study of the income of the United Kingdom in 1911 and 1924* (Oxford: Clarendon Press, 1927)

Colebrooke, H. T., *Two treatises on the Hindu law of inheritance* (Calcutta: Hindoostanee Press, 1810)

Cousins, M. E., *The awakening of Asian womanhood* (Madras: Ganesh & Co., 1922)

Cousins, J. H. and M. E. Cousins, *We two together* (Madras: Ganesh & Co., 1950)

Gour, H. S., *The Hindu Code, being a codified statement of Hindu law with a commentary thereon and relevant acts annotated*, 4th edn (Nagpur: The Central Book Depot, 1919)

The penal law of India, being an analytical, critical and expository commentary on the Indian Penal Code, Act XLV of 1860, 10th edn (Allahabad: Law Publishers, 1982)

Hindu Code (1950) Siddharth College of Arts and Science Archive, Bombay.

Keynes, J. M., *Indian currency and finance* (London: Macmillan, 1913)

Kuznets, S., *National income, 1929–1932, National Bureau of Economic Research Bulletin No. 49* (New York: National Bureau of Economic Research, 1934)

Kuznets, S. S., *National income: a summary of findings* (New York: National Bureau of Economic Research, Inc., 1946)

Macnaghten, W. H., *Principles and precedents of Moohummudan law, being a compilation of primary rules relative to the doctrine of inheritance (including the tenets of the Schia sectaries), contracts and miscellaneous subjects; and a selection of legal opinions involving these points, delivered in the several Courts of Judicature subordinate to the Presidency of Fort William, together with notes illustrative and explanatory and preliminary remarks* (Calcutta: Church Mission Press, Mirzapore, 1825)

Principles and precedents of Hindu law, being a compilation of primary rules relative to the doctrine of inheritance, contracts and miscellaneous subjects; and a selection of legal opinions involving those points delivered in the several Courts of Judicatures subordinate to the Presidency of Fort William. Together with notes illustrative and explanatory, and preliminary remarks, in two volumes (Calcutta: Baptist Mission Press, 1828 and 1829)

Maine, H. S., *Ancient law, its connection with the early history of society and its relation to modern ideas* (London: John Murray, 1861)

Village-communities in the East and West. Six lectures delivered at Oxford (London: John Murray, 1871)

Mitter, D. N., *The position of women in Hindu law*, new edn (New Delhi: Inter-India Publications, 1913, 1984)

Morley, W. H., *The administration of justice in British India: its past and present state, comprising an account of the laws peculiar to India* (London: Williams and Norgate, 1858)

Nehru, J., *Jawaharlal Nehru: an autobiography* (London: Bodley Head, 1936)

The discovery of India (New Delhi: Jawaharlal Nehru Memorial Fund, 1946, 1981 edn)

Jawaharlal Nehru's speeches, five vols (New Delhi: Publications Division, Ministry of Information and Broadcasting, Government of India, 1958–1968)

The selected works of Jawaharlal Nehru, S. Gopal (ed.), First Series, fifteen vols (New Delhi: Jawaharlal Nehru Memorial Fund; Oxford University Press, 1972–1982), Vol. 5

The selected works of Jawaharlal Nehru, S. Gopal (ed.), Second Series, forty-six vols (New Delhi: Jawaharlal Nehru Memorial Fund; Oxford University Press, 1984–), Vols 3, 9, 10, 16.II, 17

Letters to Chief Ministers, 1947–64, five vols (New Delhi: Jawaharlal Nehru Memorial Fund, 1985–1989)

Nehru, R., *Gandhi is my star* (Patna: Pustakbhandar, c. 1950)

Rai, L. L., *England's debt to India: a historical narrative of Britain's fiscal policy in India* (New York: B. W. Huebsch, 1917)

Rao, B. S., *The framing of India's constitution: a study and select documents in four volumes* (New Delhi: Indian Institute of Public Administration, 1966–1968)

Rao, P. H., *The Indian Income-tax Decisions (1919–1925): being a complete collection of all the judgments of the several High Courts in India and of the Judicial Committee of the Privy Council, relating to Income-tax, Super-tax and Excess Profits Duty reported both in the Government and Private Reports* (Madras: The Law Printing House, 1926)

Rau, D. R., *An Inheritance: the memoirs of Dhanvanthi Rama Rau* (New York: Harper & Row, 1977)

Ray, R., *My Reminiscences: social development during the Gandhian era and after* (Kolkata: Stree, 1982, 2005 edn)

Rodrigues, V., *The essential writings of B.R. Ambedkar* (New Delhi: Oxford University Press, 2002)

Schuster, G., *Private work and public causes: a personal record 1881–1978* (Cowbridge, Wales: D. Brown and Sons Ltd, 1979)

Seligman, E. R. A., *The income tax: a study of the history, theory and practice of income taxation at home and abroad* (New York, London: Macmillan, 1911)

Shah, K. T., *Report; National Planning Committee* (Bombay: Vora & Co. Publishers Ltd, 1949)

Shirras, G. F., *The science of public finance* (London: Macmillan, 1924)

'Gold and British capital in India', *The Economic Journal*, 39, 156 (December 1929), pp. 629–636

'India's national income', *Review of the International Statistical Institute*, 4, 4 (January 1937), pp. 467–483

Federal finance in peace and war; with special reference to the United States of America and the British Commonwealth (London: Macmillan and Co. Ltd, 1944)

Sinha, K. K., *An abstract of Hindu law and usage* (Moradapur, Patna: B. M. Prasad Sinha, 1910)
Thakurdas, P., J. R. D. Tata, G. D. Birla, Sir A. Dalal, Sir S. Ram, K. Lalbhai, A. D. Shroff and J. Mathai, *A brief memorandum outlining a plan of economic development for India* (Bombay: S. Ramu, at The Commercial Printing Press, 1944)
Tope, T. K. and H. S. Ursekar, *Why Hindu Code? A historical, analytical and critical exposition of the Hindu Code Bill* (Poona: Dharma Nirnaya Mandal, c. 1950)
Tyabji, F. B., *Principles of Muhammadan law: an essay at a complete statement of the personal law applicable to Muslims in British India*, 2nd edn (Calcutta: Butterworth and Co., 1919)
Wilson, R. K., *Anglo–Muhammadan law: a digest*, 2nd edn (London: W. Thacker, 1903)

Secondary sources

Agarwal, B., *A field of one's own: gender and property rights in South Asia* (Cambridge University Press, 1994)
Agnes, F., 'Hindu men, monogamy and uniform civil code', *Economic and Political Weekly*, 30, 50 (16 December 1995), pp. 3238–3244
Law and gender inequality: the politics of women's rights in India (New Delhi: Oxford University Press, 1999)
Ahmadullah, D., 'Prohibited relationship under the special marriage act: a lacuna', in Tahir Mahmood (ed.), *Family law and social change* (Bombay: Tripathi, 1975), pp. 61–68
Ahmed, A. S., *Pukhtun economy and society: traditional structure and economic development in a tribal society* (London: Routledge and Kegan Paul, 1980)
Anagol, P., *The emergence of feminism in India, 1850–1920* (Aldershot: Ashgate Publishing Ltd, 2005)
Anandhi, S., 'The women's question in the Dravidian movement c. 1925–1948', *Social Scientist*, 19, 5/6 (May–June 1991), pp. 24–41
Anderson, M. R., 'Islamic law and the colonial encounter in British India', in D. Arnold and P. Robb (eds.), *Institutions and ideologies: a SOAS reader* (London: Curzon Press Ltd, 1993), pp. 165–185
'Work construed: ideological origins of labour law in British India to 1918', in P. Robb (ed.), *Dalit movements and the meaning of labour in India* (New Delhi: Oxford University Press, 1994), pp. 87–120
Arnold, D., *The Congress in Tamilnad: nationalist politics in South India 1919–37* (New Delhi: Manohar, 1977)
Arunima, G., 'Multiple meanings: changing conceptions of matrilineal kinship in nineteenth- and twentieth-century Malabar', *The Indian Economic and Social History Review*, 33, 3 (1996), pp. 283–307
There comes papa: colonialism and the transformation of matriliny in Kerala, Malabar c. 1850–1940 (Hyderabad: Orient Longman, 2003)
Asad, T., *Formations of the secular: Christianity, Islam, modernity* (Stanford University Press, 2003)

Aschenbrenner, J., 'Politics and Islamic marriage practices in the Indian subcontinent', *Anthropological Quarterly*, 42, 4 (October 1969), pp. 305–315

Austin, G., *The Indian Constitution: cornerstone of a nation* (New Delhi: Oxford University Press, 1966)

'Religion, personal law and identity in India', in G. J. Larson (ed.), *Religion and personal law in secular India: a call to judgment* (Bloomington, Ind.: Indiana University Press, 2001), pp. 15–23

Aziz, K. K., *Ameer Ali: his life and work* (Lahore: Publishers United Ltd, 1968)

Baker, C. J., *An Indian rural economy 1880–1955: the Tamilnad countryside* (Oxford: Clarendon Press, 1964)

Balachandran, G., 'Towards a "Hindoo marriage": Anglo–Indian monetary relations in interwar India, 1917–1935', *Modern Asian Studies*, 28, 3 (1994), pp. 615–647

'Gold, silver and India in Anglo–American monetary relations 1925–1933', *The International History Review*, 18, 3 (1996), pp. 573–590

'Power and markets in global finance: the gold standard, 1890–1926', *Journal of Global History*, 3 (2008), pp. 313–335

Banerjee, A. C., *English law in India* (New Delhi: Abhinav Publications, 1984)

Banerjee, N., 'Whatever happened to the dreams of modernity? The Nehruvian era and women's position', *Economic and Political Weekly*, 33, 17 (25 April–1 May 1998), pp. WS2–WS7

Barnes, J. R., *An introduction to religious foundations in the Ottoman Empire* (Leiden: E. J. Brill, 1986)

Barrier, N. G., 'The formulation and enactment of the Punjab Alienation of Land Bill', *Indian Economic and Social History Review*, 2, 2 (1964), pp. 145–165

Basu, A. and B. Ray, *Women's struggle: a history of the All-India Women's Conference 1927–1990* (New Delhi: Manohar, 1990)

Basu, M., *Hindu women and marriage law: from sacrament to contract* (Delhi: Oxford University Press, 2001)

Basu, S., *She comes to take her rights: Indian women, property and propriety* (Albany, N.Y.: State University of New York Press, 1999)

Baxi, U., 'Siting secularism in the uniform code: a "riddle wrapped inside an enigma"?', in A. D. Needham and R. S. Rajan (eds.), *The crisis of secularism in India* (Delhi: Permanent Black, 2007), pp. 267–293

Bayly, C. A., *Indian society and the making of the British Empire, The New Cambridge History of India*, II.1 (Cambridge University Press, 1988)

Indian thought in the age of liberalism and empire (Cambridge University Press, 2012)

Beaud, J.-P. and J.-G. Prévost, 'Statistics as the science of government: the stillborn British Empire Statistical Bureau, 1918–1920', *The Journal of Imperial and Commonwealth History*, 33, 3 (2005), pp. 329–391

Bhardwaj Datta, A., 'Gendering oral history of partition: interrogating patriarchy', *Economic and Political Weekly*, 41, 22 (3–9 June 2006), pp. 2229–2235

Birla, R., *Stages of capital: law, culture and market governance in late colonial India* (Durham and London: Duke University Press, 2009)

Borthwick, M., *The changing role of women in Bengal* (Princeton University Press, 1984)

Brown, J., *Gandhi: prisoner of hope* (New Haven, Conn., London: Yale University Press, 1989)

Modern India: the origins of Indian Democracy (Delhi: Oxford University Press, 1994)

Brown, J. M., *Nehru: a political life* (New Haven, Conn., London: Yale University Press, 2003)

Brownlee, W. E., 'Economists and the formation of the modern tax system in the United States: the World War I crisis', in M. O. Furner and B. Supple (eds.), *The state and economic knowledge: the American and British experiences* (Cambridge University Press, 1990), pp. 401–435

Burchell, G., C. Gordon and P. Miller, *The Foucault effect: studies in governmentality* (University of Chicago Press, 1991)

Burton, A., *Burdens of history: British feminists, Indian women and imperial culture, 1865–1915* (Chapel Hill, N.C., London: The University of North Carolina Press, 1994)

Butalia, U., 'Community, state and gender: on women's agency during partition', *E*, 28, 17 (24 April 1993), pp. WS12–WS21, WS24

The other side of silence: voices from the partition of India (New Delhi: Penguin Books India, 1998)

Candy, C., 'Competing transnational representations of the 1930s Indian franchise questions', in I. C. Fletcher, L. E. N. Mayhall and P. Levine (eds.), *Women's suffrage in the British empire: citizenship, nation and race* (London: Routledge, 2000), pp. 191–206

Carroll, L., 'Law, custom and statutory social reform: the Hindu Widows Remarriage Act of 1856', *The Indian Economic and Social History Review*, 20, 4 (1983), pp. 363–388

'Daughter's rights of inheritance in India: a perspective on the problem of dowry', *Modern Asian Studies*, 25, 4 (1991), pp. 791–809

'Life interests and inter-generational transfer of property avoiding the law of succession', *Islamic Law and Society*, 8, 2 (2001), pp. 245–286

Carter, A. M., 'Income-tax allowances and the family in Great Britain', *Population Studies*, 6, 3 (1953), pp. 218–232

Chakrabarty, B., 'Jawaharlal Nehru and planning 1938–1941', *Modern Asian Studies*, 26, 2 (May 1992), pp. 275–285

Chakrabarty, D., *Provincialising Europe: postcolonial thought and historical difference* (Princeton University Press, 2000)

Chakravarti, U., 'Whatever happened to the Vedic dasi?: Orientalism, nationalism and a script for the past', in K. Sangari and S. Vaid (eds.), *Recasting women: essays in colonial history* (New Delhi: Kali for Women, 1989), pp. 27–87

'Reconceptualising gender: Phule, Brahmanism and Brahmanical Patriarchy', in K. Pawar (ed.), *Women in Indian history: social, economic, political and cultural perspectives* (Patiala: Vision and Venture, 1996), pp. 161–176

Rewriting history: the life and times of Pandita Ramabai (New Delhi: Kali for Women, 1998)

Chandavarkar, R., *Imperial power and popular politics: class, resistance and the state in India, c.1850–1950* (Cambridge University Press, 1998)

'Customs of governance: colonialism and democracy in twentieth century India', *Modern Asian Studies*, 41, 3 (2007), pp. 441–470

Chandra, S., *Enslaved daughters: colonialism, law and women's rights* (Delhi: Oxford University Press, 1998)

Charlesworth, N., 'The problem of government finance in British India: taxation, borrowing and the allocation of resources in the inter-war period', *Modern Asian Studies*, 19, 3, Special Issue: Papers Presented at the Conference on Indian Economic and Social History, Cambridge University, April 1984 (1985), pp. 521–548

'The origins of fragmentation of landholdings in British India: a comparative examination', in P. Robb (ed.), *Rural India* (Delhi: Oxford University Press, 1992), pp. 181–215

Chatterjee, I., *Gender, slavery and law in colonial India* (New Delhi: Oxford University Press, 1999)

Unfamiliar relations: family and history in South Asia (New Jersey: Rutgers University Press, 2004)

Chatterjee, N., *The making of Indian secularism: empire, law and Christianity, 1830–1960* (Basingstoke: Palgrave Macmillan, 2011)

Chatterjee, P., *Nationalist thought and the colonial world: a derivative discourse?* (London: Zed Books, 1986)

'The resolution of the women's question', in K. Sangari and S. Vaid (eds.), *Recasting women: essays in colonial history* (New Delhi: Kali for Women, 1989), pp. 233–253

'Secularism and toleration', *Economic and Political Weekly,* 29, 28 (9 July 1994), pp. 1768–1777

A princely impostor? The Kumar of Bhawal and the secret history of Indian nationalism (Delhi: Permanent Black, 2002)

The politics of the governed: reflections on popular politics in most of the world (New York: Columbia University Press, 2004)

'Democracy and economic transformation in India', *Economic and Political Weekly*, 43, 16 (19 April 2008), pp. 53–62

Chatterji, J., *Bengal divided* (Cambridge University Press, 1994)

The spoils of partition: Bengal and India 1947–1967 (Cambridge University Press, 2007)

Chiriyankandath, J., '"Democracy" under the Raj: elections and separate representation in British India', in N. Gopal Jayal (ed.), *Democracy in India* (New Delhi: Oxford University Press, 2001), pp. 53–81

Choudhury, R., *The plans for economic development in India* (Calcutta: Bookland Private Ltd, 1959)

Cohn, B., 'From Indian status to British contract', *The Journal of Economic History*, 21, 4 (December 1961), pp. 613–628

Colonialism and its forms of knowledge: the British in India (Princeton University Press, 1996)

Conlon, F. F., *A caste in a changing world: the Chitrapur Saraswat Brahmans, 1700–1935* (Berkeley, Calif., London: University of California Press, 1977)

Dalton, D., *Mahatma Gandhi: nonviolent power in action* (New York: Columbia University Press, 1993)

Das, S., 'A critical evaluation of land reforms in India', in B. K. Sinha and Pushpendra (eds.), *Land reforms in India: an unfinished agenda* (New Delhi: Sage Publications, 2000), pp. 29–44

Daunton, M., *Just taxes: the politics of taxation in Britain, 1914–1979* (Cambridge University Press, 2002)

De, R., 'Mumtaz Bibi's broken heart: the many lives of the Dissolution of Muslim Marriages Act', *Indian Economic and Social History Review*, 46, 1 (2009), pp. 105–130

Denault, L., 'Partition and the politics of the joint family in nineteenth-century north India', *The Indian Economic and Social History Review*, 46, 1 (2009), pp. 27–55

Duncan M. Derrett, J., 'The relative antiquity of the Mitakshara and Dayabhaga', *Madras Law Journal*, 2 (1952) (reprinted in *Essays in classical and modern law*, Leiden: Brill, Vol. 1, 1976, pp. 198–206)

Derrett, J. D. M., 'The future of Malabar personal law within the framework of the projected Hindu Code Bill', *Kerala Law Times* (1952), pp. 9–20

'A new light on the Mitakshara as a legal authority', *Journal of Indian History*, XXX (April 1952), pp. 35–55

'Factum Valet: the adventures of a maxim', *The International and Comparative Law Quarterly*, 7, 2 (April 1958), pp. 280–302

Religion, law and the state in India (London: Faber and Faber, 1968)

Desai, S. T., *The law of partnership in India and Pakistan*, 3rd edn (Calcutta: S. C. Sarkar and Sons (Private) Ltd, 1964)

Deshmukh, P. D., 'India and Burma: central legislature – review of legislation', *Journal of Comparative Legislation and International Law*, 3, 1/20 (1948), pp. 111–135

Dewey, C., 'The influence of Sir Henry Maine on agrarian policy in India', in A. Diamond (ed.), *The Victorian achievement of Sir Henry Maine: a centennial reappraisal* (Cambridge University Press, 1991), pp. 353–375

Anglo–Indian attitudes: the mind of the Indian Civil Servant (London: The Hambledon Press, 1993)

Dhagamwar, V., *Towards the uniform civil code* (Bombay: N. M. Tripathi, 1989)

Diamond, A., *The Victorian achievement of Sir Henry Maine: a centennial reappraisal* (Cambridge University Press, 1991)

Diwan, P., 'The Hindu Marriage Act, 1955', *The International and Comparative Law Quarterly*, 6, 2 (April 1957), pp. 263–272

Dunbar, G., *A history of India from the earliest times to the present day* (London: Ivor, Nicholson and Watson, 1936)

Dyson, T. and M. Moore, 'On kinship structure, female autonomy, and demographic behavior in India', *Population and Development Review*, 9, 1 (March 1983), pp. 35–60

Engineer, A. A., *The Shah Bano controversy* (Bombay: Orient Longman, 1987)

Everett, J. M., *Women and social change in India* (New Delhi: Heritage, 1981)

Fisher, M. H., 'Representing "his" women: Mirza Abu Taleb Khan's "Vindication of the Liberties of Asiatic Women"', *Indian Economic and Social History Review*, 37, 2 (2000), pp. 215–237

'Becoming and making "family" in Hindustan', in I. Chatterjee (ed.), *Unfamiliar relations: family and history of South Asia* (New Jersey: Rutgers University Press, 2004), pp. 95–121

Forbes, G., 'The politics of respectability: Indian women and the Indian National Congress', in D. A. Low (ed.), *The Indian National Congress: centenary highlights* (Oxford: Oxford University Press, 1988), pp. 54–67
Women in modern India, The New Cambridge History of India, IV.2 (Cambridge University Press, 1996)
Foucault, M., *The use of pleasure: the history of sexuality* (New York: Vintage Books, 1985)
Security, territory, population: lectures at the College de France, 1977–78 (Basingstoke: Palgrave Macmillan, 2007)
The birth of biopolitics: lectures at the College de France, 1978–1979 (Basingstoke: Palgrave Macmillan, 2008)
Frankel, F. R., *India's political economy 1947–1977* (New Delhi: Oxford University Press, 2005)
Freitag, S., *Collective action and community: public arenas and the emergence of communalism in north India* (Berkeley, Calif.: University of California Press, 1989)
Galanter, M., 'Secularism, east and west', *Comparative Studies in Society and History*, 7, 2 (1965), pp. 133–159
'The displacement of traditional law in modern India', *Journal of Social Issues*, 24, 4 (1968), pp. 65–90
'Hinduism, secularism and the Indian judiciary', *Philosophy East and West*, 21, 4 (October 1971), pp. 467–487
Law and society in modern India, (ed.) Rajeev Dhavan (New Delhi: Oxford University Press, 1997)
Gallagher, J. and A. Seal, 'Britain and India between the wars', *Modern Asian Studies*, 15, 3 (1981), pp. 387–414
Gandhi, M. K., *The story of my experiments with truth: an autobiography*; translated from the original Gujarati (c. 1927) by M. Desai (Harmondsworth: Penguin, 1982)
Garrett Fawcett, M., *What I remember* (London: Fisher Unwin, 1924)
Geetha, V., 'Periyar, women and an ethic of citizenship', *Economic and Political Weekly*, 33, 17 (25 April 1998), pp. WS9–WS15
Geetha, V. and S. V. Rajadurai, *Towards a non-Brahmin millennium: from Iyothee Thass to Periyar* (Calcutta: Samya, in association with Book Review Literary Trust, 1998)
Ghosh, D., *Sex and the family in colonial India: the making of empire* (Cambridge University Press, 2006)
Gilmartin, D., 'Kinship, women and politics in twentieth-century Punjab', in G. Minault (ed.), *The extended family: women and political participation in India and Pakistan* (Delhi: Chanakya Publications, 1981), pp. 151–170
Empire and Islam: Punjab and the making of Pakistan (Berkeley, Calif.: University of California Press, 1988)
Gledhill, A., 'The influence of common law and equity on Hindu law since 1800', *The International and Comparative Law Quarterly*, 3, 4 (1954), pp. 576–603
Gopal, S., 'The formative ideology of Jawaharlal Nehru', *Economic and Political Weekly*, 11, 21 (22 May 1976), pp. 787–789, 791–792
Gopalakrishnan, T. P., *Hindu Marriage Law* (Allahabad: Law Book Company, 1957)

Gore, M. S., *The social context of an ideology: Ambedkar's political and social thought* (New Delhi: Sage Publications, 1993)
Goswami, M., *Producing India: from colonial economy to national space* (New Delhi: Permanent Black, 2004)
Gould, W., *Hindu nationalism and the language of politics in late colonial India* (Cambridge University Press, 2004)
'Contesting secularism in colonial and post-colonial north India between the 1930s and 1950s', *Contemporary South Asia*, 14, 4 (2005), pp. 481–494
Guha, R., *Dominance without hegemony: history and power in colonial India* (Cambridge, Mass.: Harvard University Press, 1997)
Hardiman, D., 'The crisis of the lesser Patidars: peasant agitations in Kheda District, Gujarat 1917–34', in D. A. Low (ed.), *Congress and the Raj: facets of the Indian struggle, 1917–47* (London: Heinemann Educational, 1977), pp. 47–75
Hardy, P., *Muslims of British India* (Cambridge University Press, 1972)
Hasan, M., *Nationalism and communal politics in India, 1885–1930* (New Delhi: Manohar, 1991)
Legacy of a divided nation: India's Muslims since independence (London: Hurst, 1997)
Hasan, Z., 'Minority identity, Muslim Women Bill campaign and the political process', *Economic and Political Weekly*, 24, 1 (7 January 1989), pp. 44–50
'Minority identity, state policy and the political process', in Z. Hasan (ed.), *Forging identities* (Boulder, Colo., Oxford: Westview Press, 1994), pp. 59–73
Heimsath, C., 'The origin and enactment of the Indian Age of Consent Bill, 1891', *The Journal of Asian Studies*, 21, 4 (August 1962), pp. 491–504
Heimsath, C. H., *Indian nationalism and Hindu social reform* (Princeton University Press, 1964)
Hodges, S., *Contraception, colonialism and commerce: birth control in South India, 1920–1940* (Aldershot: Ashgate Publishing Ltd, 2008)
Holcombe, L., *Wives and property: reform of the Married Women's Property Law in nineteenth-century England* (Oxford: University of Toronto Press, 1983)
Howson, S., 'The management of sterling, 1932–1939', *Journal of Economic History*, 40, 1 (1980), pp. 53–60
Hutchinson, L., *Conspiracy at Meerut* (New York: Arno Press, 1972)
Indermaur, J. C. T., *Epitome of leading cases in conveyancing and equity* (London: Stevens & Haynes, 1903)
Jacobson, D., 'The women of north and central India: goddesses and wives', in D. Jacobson and S. S. Wadley (eds.), *Women in India: two perspectives* (Delhi: Manohar, 1992), pp. 15–109
Jalal, A., *Self and sovereignty: individual and community in South Asian Islam since 1850* (London: Routledge, 2000)
Johnson, G., *Provincial politics and Indian nationalism: Bombay and the Indian National Congress 1880–1915* (Cambridge University Press, 1973)
Kapadia, K. M., *Marriage and Family in India* (Bombay: Oxford University Press, 1955)
Kaviraj, S., 'On state, society and discourse in India', in J. Manor (ed.), *Rethinking third world politics* (London: Longman, 1991), pp. 72–99

'Modernity and politics in India', *Daedalus*, 129, 1 (Winter 2000), pp. 137–162
Khan, Y., *The great partition: the making of India and Pakistan* (New Haven, London: Yale University Press, 2007)
Khetarpal, S. P., 'Codification of Hindu law', in D. C. Buxbaum (ed.), *Family law and customary law in Asia: a contemporary legal perspective* (The Hague: Kluwer Academic Publishers, 1968), pp. 202–234
Khilnani, S., *The idea of India* (London: Penguin, 1998, 2003 edn)
Kishwar, M., 'Gandhi on Women', *Economic and Political Weekly*, 20, 40, 41 (1985), pp. 1691–1701, 1753–1758
'Codified Hindu law: myth and reality', *Economic and Political Weekly*, 29, 33 (13 August 1994), pp. 2145–2161
'Pro-women or anti-Muslim? The Shah Bano controversy', in M. Kishwar (ed.), *Religion at the service of nationalism, and other essays* (New Delhi: Oxford University Press, 1998), pp. 206–224
Knaplund, P., 'Great Britain and the British Empire', in F. H. Hinsley (ed.), *Material progress and world-wide problems 1870–1898* (Cambridge University Press, 1962), pp. 383–410
Kodoth, P., 'Courting legitimacy and delegitimising custom? Sexuality, sambandham and marriage reform in late nineteenth century Malabar', *Modern Asian Studies*, 35, 2 (2001), pp. 349–384
Kolsky, E., *Colonial justice in British India: white violence and the rule of law* (Cambridge University Press, 2010)
Kotsonis, Y., '"No place to go": taxation and state transformation in late imperial and early Soviet Russia', *The Journal of Modern History*, 76, 3 (September 2004), pp. 531–577
'"Face-to-Face": the state, the individual and the citizen in Russian Taxation, 1863–1917', *Slavic Review*, 63, 2 (Summer 2004), pp. 221–246
Kozlowski, G. C., *Muslim endowments and society in British India* (Cambridge University Press, 1985)
'Muslim women and the control of property in north India', *Indian Economic and Social History Review*, 24, 2 (1987), pp. 163–181
Kudaisya, G. and T. T. Yong, *The aftermath of partition in South Asia* (London: Routledge, 2000)
Kugle, S. A., 'Framed, blamed and renamed: the recasting of Islamic jurisprudence in colonial South Asia', *Modern Asian Studies*, 35, 2 (2001), pp. 257–313
Kumar, R., *The history of doing: an illustrated account of movement for women's rights and feminism in India 1800–1990* (New Delhi: Kali for Women, 1993)
Levy, H. L., 'Lawyer-scholars, lawyer-politicians and the Hindu Code Bill, 1921–1956', *Law & Society Review*, 3, 2/3, Special Issue Devoted to Lawyers in Developing Societies with Particular Reference to India (November 1968–February 1969), pp. 303–316
Linehan, D., 'Regional survey and the economic geographies of Britain, 1930–1939', *Transactions of the Institute of British Geographers*, 28, 1 (March 2003), pp. 96–122
Madan, T. N., 'Secularism in its place', *Journal of Asian Studies*, 46, 4 (1987), pp. 747–759

Major, A., *Pious flames: European encounters with sati 1500–1830* (New Delhi: Oxford University Press, 2006)
Majumdar, R., *Marriage and modernity: family values in colonial Bengal* (Durham: Duke University Press, 2009)
Malhotra, A., 'The body as metaphor for the nation: caste, masculinity and femininity in the Satyartha Prakash of Swami Dayananda Saraswati', in A. A. Powell and S. Lambert-Hurley (eds.), *Rhetoric and reality: gender and the colonial experience in South Asia* (New Delhi: Oxford University Press, 2006), pp. 121–153
Mallampalli, C., 'Escaping the grip of personal law in colonial India: proving custom, negotiating Hindu-ness', *Law and History Review*, 28, 4 (November 2010), pp. 1043–1065
Mani, L., *Contentious traditions: the debate on sati in colonial India* (Berkeley, Calif.: University of California Press, 1998)
Mantena, K., 'Law and "tradition": Henry Maine and the theoretical origins of indirect rule', in A. Lewis and M. Lobban (eds.), *Law and history* (Oxford University Press, 2004), pp. 159–188
Alibis of empire: Henry Maine and the ends of liberal imperialism (Princeton University Press, 2010)
Marshall, P. J., *Bengal: the British bridgehead: Eastern India, 1740–1828, The New Cambridge History of India*, II.2 (Cambridge University Press, 1987)
Mayo, K., *Selections from Mother India* (Delhi: Kali for Women, 1998)
Mehta, U. S., *Liberalism and empire: a study in nineteenth century British liberal thought* (University of Chicago Press, 1999)
Menon, N., 'Women and citizenship', in P. Chatterjee (ed.), *Wages of freedom: fifty years of the Indian nation-state* (Delhi: Oxford University Press, 1998), pp. 241–266
'Rights, bodies and the law: rethinking feminist politics of justice', in N. Menon (ed.), *Gender and politics in India* (New Delhi: Oxford University Press, 1999), pp. 262–296
'Citizenship and the passive revolution: interpreting the First Amendment', *Economic and Political Weekly*, 39, 18 (1–7 May 2004), pp. 1812–1819
Menon, V. P., *The transfer of power in India* (Calcutta: Orient Longmans, 1957)
Metcalf, T., *Ideologies of the Raj, The New Cambridge History of India,* III.4 (Cambridge University Press, 1994)
Mines, M., 'Courts of law and styles of self in eighteenth-century Madras: from hybrid to colonial self', *Modern Asian Studies*, 35, 1 (2001), pp. 33–74
Misra, B. B., *The central administration of the East India Company, 1773–1834* (Manchester University Press, 1959)
The Indian middle classes (London: Oxford University Press, 1961)
Mitchell, T., *Rule of experts: Egypt, techno-politics, modernity* (Berkeley, Calif., London: University of California Press, 2002)
Mittal, S. N., *Central taxation of income in India: a critical and suggestive study* (Delhi: B. R. Publishing Corporation, 1986)
Mody, P., 'Love and the law: love-marriage in Delhi', *Modern Asian Studies*, 36, 1 (2002), pp. 223–256
Mukherjee, A., *Imperialism, nationalism and the making of the Indian capitalist class, 1920–1947* (New Delhi: Sage Publications, 2002)

Mukhopadhyay, M., *Legally dispossessed: gender, identity and the process of law* (Calcutta: Stree, 1998)

Muldoon, A., *Empire, politics and the creation of the 1935 India Act* (Farnham: Ashgate, 2009)

Nair, J., *Women and law in colonial India: a social history* (New Delhi: Kali for Women, 1996)

Mysore modern: rethinking the region under princely rule (Minneapolis, Minn.: University of Minnesota Press, 2011)

Nanda, B. R., *Jawaharlal Nehru: rebel and statesman* (Delhi: Oxford University Press, 1995)

Nandy, A., 'The politics of secularism and the recovery of religious tolerance', in V. Das (ed.), *Mirrors of violence: communities, riots and survivors in South Asia* (Delhi: Oxford University Press, 1990), pp. 69–93

Newbigin, E., 'A post-colonial patriarchy? Representing family in the Indian nation-state', *Modern Asian Studies*, 44, 1 (2010), pp. 121–144

'Personal law and citizenship in India's transition to independence', *Modern Asian Studies*, 45, 1 (2011), pp. 7–32

O'Hanlon, R., *Caste, conflict and ideology: Mahatma Jotirao Phule and low caste protest in nineteenth-century western India* (Cambridge University Press, 1985)

'Issues of widowhood: gender resistance in colonial western India', in D. Haynes and G. Prakash (eds.), *Contesting power: resistance and everyday social relations in South Asia* (New Delhi: Oxford University Press, 1991), pp. 62–108

A comparison between women and men: Tarabai Shinde and the critique of gender relations in colonial India (New Delhi: Oxford University Press, 2000)

Oldenberg, V. T., *Dowry murder: the imperial origins of a cultural crime* (Oxford University Press, 2002)

Orsini, F., 'Domesticity and beyond: Hindi women's journals in the early twentieth century', *South Asia Research*, 19, 2 (1999), pp. 137–160

'Love letters', in Francesca Orsini (ed.), *Love in South Asia: a cultural history* (Cambridge University Press, 2006), pp. 228–258

Pal, R. and Balai Lal Pal, *The law of income tax in British India, being Act XI of 1922 as amended by Act VII of 1939 with explanatory notes and commentaries* (Calcutta: Eastern Law House, 1940)

Pandey, G., *The construction of communalism in colonial north India* (New Delhi: Oxford University Press, 1992)

'The prose of otherness', in G. Pandey and P. Chatterjee (eds.), *Subaltern Studies VII* (Delhi: Oxford University Press, 1994), pp. 189–221

Remembering Partition: violence, nationalism and Indian history (Cambridge University Press, 2001)

Pandit, H. N., *The PM's President: a new concept on trial* (New Delhi: S. Chand & Co., 1974)

Parashar, A., *Women and family law reform in India: uniform Civil Code and gender equality* (Delhi: Sage Publications, 1992)

Pardeshi, P., 'The Hindu Code Bill for the liberation of women', in A. Rao (ed.), *Gender and caste* (New Delhi: Kali for Women, 2003), pp. 346–362

Parekh, B., *Gandhi's political philosophy: a critical examination* (Basingstoke: Macmillan, 1989)

'Nehru and the national philosophy of India', *Economic and Political Weekly*, 26, 1/2 (5–12 January 1991), pp. 35–39, 41–43, 45–48
Parthasarathi, P., *Why Europe grew rich and Asia did not: global economic divergence, 1600–1850* (Cambridge University Press, 2011)
Pathak, Z., and Rajeswari Sunder Rajan, 'Shahbano', *Signs*, 14, 3 (Spring 1989), 558–583
Patterson, M. L. P., 'Review article: M.R. Jayakar, The story of my life Vol. I 1873–1922', *The Journal of Asian Studies*, 18, 3 (May 1959), pp. 403–405
Powers, D. S., 'Orientalism, colonialism and legal history: the attack on Muslim family endowments in Algeria and India', *Comparative Studies in Society and History*, 31, 3 (1989), pp. 535–571
Prakash, G., 'The colonial genealogy of society: community and political modernity in India', in P. Joyce (ed.), *The social in question: new bearings in history and the social sciences* (London: Routledge, 2002), pp. 81–96
Price, P. G., 'Ideology and ethnicity under British imperial rule: "Brahmans", lawyers and kin-caste rules in Madras Presidency', *Modern Asian Studies*, 23, 1 (1989), pp. 151–177
Kingship and political practice in colonial India (Cambridge University Press, 1996)
Pugh, M., *The march of the women: a revisionist analysis of the campaign for women's suffrage, 1866–1914* (Oxford University Press, 2000)
Rankin, G., 'Hindu law to-day', *Journal of Comparative Legislation and International Law*, 27, 3/4 (1945), 1–17
Rao, A., 'Sexuality and the family form', *Economic and Political Weekly*, 40, 8 (19–25 February 2005), pp. 715–718
The caste question: Dalits and the politics of modern India (Berkeley, Calif.: University of California Press, 2009)
Rashid, K., *Wakf administration in India: a socio-legal study* (New Delhi: Vikas, 1978)
Reeves, P., *Landlords and governments in Uttar Pradesh: a study of their relations until zamindari abolition* (Delhi: Oxford University Press, 1991)
Rendall, J., 'John Stuart Mill, liberal politics and the movements for women's suffrage, 1865–1873', in A. Vickery (ed.), *Women, privilege and power: British politics 1750 to the present* (Stanford University Press, 2001), pp. 168–200
Robinson, F., *Separatism among Indian Muslims: the politics of the United Provinces 1860–1923* (London: Cambridge University Press, 1974)
'The British Empire and Muslim identity in South Asia', *Transactions of the Royal Historical Society*, Sixth Series, Vol. 8 (December 1998), pp. 271–289
Rocher, L., *Jimutavahana's Dayabhaga: the Hindu law of inheritance in Bengal* (Oxford University Press, 2002)
Rocher, R., 'The creation of Anglo-Hindu law', in T. Lubin, D. R. Davis and J. K. Krishnan (eds.), *Hinduism and law: an introduction* (Cambridge University Press, 2010), pp. 78–88
Rose, N., *Inventing our selves: psychology, power and personhood* (Cambridge University Press, 1996)
Powers of freedom: reframing political thought (Cambridge University Press, 1999)

Rothermund, D., 'The Great Depression and British financial policy in India 1929–34', *Indian Economic and Social History Review*, 18, 1 (1981), pp. 1–17
India in the great depression (Delhi: Manohar, 1992)
An economic history of India: from pre-colonial times to 1991 (London: Routledge, 1993)
Roy, T., *Rethinking economic change in India: labour and livelihood* (London: Routledge, 2005)
Sabine, B. E. V., *A history of income tax* (London: Allen and Unwin, 1966)
Sangari, K., 'Gender lines: personal laws, uniform laws, conversion', *Social Scientist*, 27, 5/6 (May–June 1999), pp. 17–61
Sarkar, J., 'Power, hegemony and politics: leadership struggle in Congress in the 1930s', *Modern Asian Studies*, 40, 2 (2006), pp. 333–379
Sarkar, L., 'Jawaharlal Nehru and the Hindu Code Bill', in B. R. Nanda (ed.), *Indian women: from purdah to modernity* (New Delhi: Vikas Publishing House, 1976), pp. 87–98
Sarkar, S., 'The logic of Gandhian nationalism: civil disobedience and the Gandhi–Irwin Pact, 1930–31', *Indian Historical Review*, 3, 1 (July 1976), pp. 114–146
Sarkar, T., 'Politics and women in Bengal – the conditions and meaning of participation', *Indian Economic and Social History Review*, 21, 1 (1984), pp. 91–101
Hindu wife, Hindu nation: community, religion and cultural nationalism (London: Hurst & Company, 2001)
Sastri, K. V. S., *Federal-state fiscal relations in India: a study of the Finance Commission and the techniques of fiscal adjustment* (Bombay: Oxford University Press, 1966)
Schechtman, J. B., 'Evacuee property in India and Pakistan', *Pacific Affairs*, 24, 4 (December 1951), pp. 406–413
Schmitthener, S., 'A sketch of the development of the legal profession in India', *Law & Society Review*, 3, 2/3, Special Issue Devoted to Lawyers in Developing Societies with Particular Reference to India (November 1968–February 1969), pp. 337–382
Scott, J., *Gender and the politics of history* (New York: Columbia University Press, 1989)
Only paradoxes to offer: French feminists and the rights of man (Cambridge, Mass., London: Harvard University Press, 1996)
Sen, A., 'Secularism and its discontents', in K. Basu and S. Subrahmanyam (eds.), *Unravelling the nation: sectarian conflict in India* (New Delhi: Penguin, 1996), pp. 11–43
Sen, S., 'Offences against marriage: negotiating custom in colonial Bengal', in M. E. John and J. Nair (eds.), *A question of silence? The sexual economies of modern India* (New Delhi: Kali for Women, 1998), pp. 77–110
Women and labour in late colonial India: the Bengal jute industry (Cambridge University Press, 1999)
'Towards a feminist politics? The Indian women's movement in historical perspective', in K. Kapadia (ed.), *The violence of development: the politics of identity, gender and social inequalities in India* (Delhi: Kali for Women, 2002), pp. 459–524

Sengupta, P., *Sarojini Naidu: a biography* (London: Asia Publishing House, 1966)

Shaikh, F., *Community and consensus in Islam: Muslim representation in colonial India, 1860–1947* (Cambridge University Press, 1989)

Sharafi, M., 'The semi-autonomous judge in colonial India: chivalric imperialism meets Anglo-Islamic dower and divorce law', *The Indian Economic and Social History Review*, 46, 1 (2009), pp. 57–81

Shatzmiller, M., 'Islamic institutions and property rights: the case of the "public good" waqf', *Journal of the Economic and Social History of the Orient*, 44, 1 (2001), pp. 44–74

Sherman, T. C., William Gould and Sarah Ansari, 'From subjects to citizens: society and the everyday state in India and Pakistan, 1947–1970', *Modern Asian Studies*, 45, 1 (2011), pp. 1–6

Singer, W., *A constituency suitable for ladies, and other social histories of Indian elections* (New Delhi: Oxford University Press, 2007)

Sinha, C., 'Images of motherhood: the Hindu Code Bill discourse', *Economic and Political Weekly*, 42, 43 (27 October–2 November 2007), pp. 49–57

Sinha, M., 'The lineage of the "Indian" modern: rhetoric, agency and the Sarda Act in late colonial India', in A. Burton (ed.), *Gender, sexuality and colonial modernities* (London: Routledge, 1999), pp. 207–220

Specters of Mother India: the global restructuring of an empire (Durham, N.C.: Duke University Press, 2006)

Skuy, D., 'Macaulay and the Indian Penal Code of 1862: the myth of the inherent superiority and modernity of the English legal system compared to India's legal system in the nineteenth century', *Modern Asian Studies*, 32, 3 (July 1998), pp. 512–557

Smith, D. E., *India as a secular state* (Princeton University Press, 1963)

Som, R., 'Jawaharlal Nehru and the Hindu Code Bill: a victory of symbol over substance', *Modern Asian Studies*, 28, 1 (1994), pp. 165–195

Sonalkar, W., 'An agenda for gender politics', *Economic and Political Weekly*, 34, 1/2 (1999), pp. 24–29

Spaulding, H., *The income tax in Great Britain and the United States* (London: P. S. King and Son Ltd, 1927)

Sreenivas, M., 'Conjugality and capital: gender, families and property under colonial law in India', *Journal of Asian Studies*, 63, 4 (November 2004), pp. 937–960

Wives, widows and concubines: the conjugal family ideal in colonial India (Bloomington, Ind.: Indiana University Press, 2008)

Stokes, E., *The peasant and the Raj: studies in agrarian society and peasant rebellion in colonial India* (Cambridge University Press, 1978)

Sturman, R., 'Property and attachments: defining autonomy and the claims of family in nineteenth-century western India', *Comparative Studies in Society and History*, 47, 3 (2005), pp. 611–637

'Marriage and family in colonial Hindu law', in T. Lubin, D. R. Davis and Jayanth K. Krishnan (eds.), *Hinduism and law: an introduction* (Cambridge University Press, 2010), pp. 89–104

The government of social life in colonial India: liberalism, religious law and women's rights (Cambridge University Press, 2012)

Subramanian, N., 'Making family and nation: Hindu marriage law in early postcolonial India', *Journal of Asian Studies*, 69, 3 (August 2010), 771–798

Sunder Rajan, R., 'Women between community and state: some implications of the uniform civil code debates in India', *Social Text*, 18 4 (Winter 2000), pp. 55–82

The scandal of the state: women, law and citizenship in postcolonial India (Durham and London: Duke University Press, 2003)

Talbot, I., *Punjab and the Raj, 1849–1947* (New Delhi: Manohar, 1988)

Talbot, I., with Darshan Singh Tatla (ed.), *Epicentre of violence: partition voices and memories from Amritsar* (Delhi: Permanent Black, 2006)

Tejani, S., *Indian secularism: a social and intellectual history 1890–1950* (Bloomington, Ind.: Indiana University Press, 2008)

Thomas, P. J., *The growth of federal finance in India: being a survey of India's public finances from 1833 to 1939* (Madras: Oxford University Press, 1939)

Tidrick, K., *Gandhi: a political and spiritual life* (London: I. B. Tauris, 2006)

Tomlinson, B. R., 'The political economy of the Raj: the decline of colonialism', *The Journal of Economic History*, 42, 1 (March 1982), pp. 133–137

The economy of modern India 1860–1970, The New Cambridge History of India, III.3 (Cambridge University Press, 1993)

Tooze, J. A., 'Imagining national economies: national and international economic statistics', in G. Cubitt (ed.), *Imagining nations* (Manchester University Press, 1998), pp. 212–228

Travers, R., *Ideology and empire in eighteenth-century India* (Cambridge University Press, 2007)

Ventry Jr., D. J., 'Saving Seaborn: ownership not marriage as the basis of family taxation', *Indiana Law Journal*, 86, 4 (Fall 2011), pp. 1459–1526

Wardle, L. D. and L. C. Nolan, *Fundamental principles of family law*, 2nd edn (Buffalo, N.Y.: William S. Hein and Co., Inc., 2006)

Washbrook, D., 'Law, state and agrarian society in colonial India', *Modern Asian Studies*, 15, 3 (1981), pp. 649–721

'The rhetoric of democracy and development in India', in N. G. Jayal (ed.), *Democracy in India* (New Delhi: Oxford University Press, 2001), pp. 82–96

Williams, R. V., *Postcolonial politics and personal laws: colonial legal legacies and the Indian state* (New Delhi: Oxford University Press, 2006)

'Hindu law as personal law: state and identity in the Hindu Code Bill debates, 1952–1956', in T. Lubin, D. R. Davis and Jayanth K. Krishnan (eds.), *Hinduism and law: an introduction* (Cambridge University Press, 2010), pp. 105–119

Zamindar, V. F.-Y., *The long partition and the making of modern South Asia: refugees, boundaries, histories* (New York, Chichester: University of Columbia Press, 2007)

Zelliot, E., 'Congress and the untouchables', in R. Sisson and S. Wolpert (eds.), *Congress and Indian nationalism: the pre-Independence phase* (Berkeley, Calif., London: University of California Press, 1988), pp. 182–197

'Dr Ambedkar and the empowerment of women', in A. Rao (ed.), *Gender and caste* (New Delhi: Kali for Women, 2003), pp. 204–217

Unpublished dissertations

Chakrabarti, A., 'Widowhood in colonial Bengal 1850–1930', Unpublished thesis, University of Calcutta, 2004

Sinha, C., 'Hindu Code Bill (1941–56) and feminist consciousness in Bombay', Unpublished thesis, University of Bombay, 2004

Newbigin, E., 'The Hindu Code Bill and the making of the modern Indian state', Unpublished thesis, University of Cambridge, 2008

Online sources

Law Commission of India, 'Report on property rights of women: proposed reforms under Hindu law' (May 2000), www.lawcommissionofindia.nic.in/kerala.htm

Lok Sabha Debates, 29 August 2005, http://indiankanoon.org/doc/842089/

Index

Cambridge Studies in Indian History and Society

Other titles in the series

1. C. A. Bayly, *Empire and Information: Intelligence Gathering and Social Communication in India, 1780–1870*
2. Ian Copland, *The Princes of India in the Endgame of Empire, 1917–1947*
3. Samita Sen, *Women and Labour in Late Colonial India*: *The Bengal Jute Industry*
4. Sumit Guha, *Environment and Ethnicity in India, 1200–1991*
5. Tirthankar Roy, *Traditional Industry in the Economy of Colonial India*
6. Claude Markovits, *The Global World of Indian Merchants, 1750–1947: Traders of Sind from Bukhara to Panama*
7. Prasannan Parthasarathi, *The Transition to a Colonial Economy: Weavers, Merchants and Kings in South India, 1720–1800*
8. Nandini Gooptu, *The Politics of the Urban Poor in Early Twentieth-Century India*
9. Norbert Peabody, *Hindu Kingship and Polity in Precolonial India*
10. Daud Ali, *Courtly Culture and Political Life in Early Medieval India*
11. William Gould, *Hindu Nationalism and the Language of Politics in Late Colonial India*
12. William R. Pinch, *Warrior Ascetics and Indian Empires*
13. Durba Ghosh, *Sex and the Family in Colonial India: The Making of Empire*
14. Robert Travers, *Ideology and Empire in Eighteenth-Century India: The British in Bengal*
15. Joya Chatterji, *The Spoils of Partition: Bengal and India, 1947–1967*
16. Nile Green, *Islam and the Army in Colonial India: Sepoy Religion in the Service of Empire*
17. Elizabeth Kolsky, *Colonial Justice in British India: White Violence and the Rule of Law*
18. Justin Jones, *Shi'a Islam in Colonial India: Religion, Community and Sectarianism*
19. Chandra Mallampalli, *Race, Religion and Law in Colonial India: Trials of an Interracial Family*
20. Douglas E. Haynes, *Small Town Capitalism in Western India: Artisans, Merchants and the Making of the Informal Economy, 1870–1960*
21. Rachel Sturman, *The Government of Social Life in Colonial India: Liberalism, Religious Law, and Women's Rights*
22. Eleanor Newbigin, *The Hindu Family and the Emergence of Modern India: Law, Citizenship and Community*